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1 that you had Ann involved in?  
2 **A. Well, there were two main projects that revolve**  
3 **around that program. It's commonly referred to as the**  
4 **PASI. The PA is preliminary assessment portion of the**  
5 **program which is similar to what a phase 1 environmental**  
6 **audit would be. And the SI portion is the site**  
7 **inspection portion or the sampling portion of the**  
8 **preremedial program commonly referred to as the phase 2**  
9 **portion, phase 2 audit.**

10 **(Will Deposition Exhibit No. 3 was marked**  
11 **for identification.)**

12 **BY MS. BREWINGTON:**

13 Q. I just put in front of you a document. It's  
14 titled, "Breslin v. State of DE/Department of Natural  
15 Resources." It provides a case number, and it says  
16 regarding April 2nd, 2004, request for additional  
17 information, and the date is April 26, 2004.

18 Based on the top of this document here in  
19 the square box, it indicates that Ann Breslin was hired  
20 in November of 1994 as an Environmental Scientist II and  
21 that she became full-time in -- no, I'm sorry. And then  
22 January 18, '94, she was seasonal. Is that correct, or  
23 do you not know?

24 **A. I don't know.**

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1 Q. It also indicates that the starting salary for  
2 both Ann Breslin and Keith Robertson was \$22,998. Do you  
3 see where it says that?

4 **A. Yes, I do.**

5 Q. And then as of January 2002, Ann Breslin's  
6 salary was \$38,390 and Keith Robertson's salary was  
7 \$43,100.25.

8 **A. I see that.**

9 Q. Do you have any idea why there was such a  
10 discrepancy between Ann Breslin's salary and  
11 Keith Robertson's?

12 **A. No, I do not.**

13 Q. Then we will go to the December 2002 salary.  
14 Do you see where it indicates that Ann Breslin made  
15 \$39,158 and Keith Robertson was making \$43,962?

16 **A. Uh-huh. I see that.**

17 Q. Just below that it indicates Ann Breslin's  
18 specific job duties from performance plan.

19 **A. Uh-huh.**

20 Q. If you could review those for me.

21 **A. (Complied.)**

22 **Okay.**

23 Q. The job duties listed underneath there where it  
24 says, "Ann Breslin's Specific Job Duties From Performance

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1 Plan," were these the job duties that she was responsible  
2 for when she reported to you?

3 **A. Yes.**

4 Q. Now I'd like to take you to -- I believe a page  
5 of this is missing. I just looked at it. So I probably  
6 can't ask you too much about it, but I'd like you to turn  
7 to Keith Robertson's --

8 MS. CSIZMADIA: It may be flip-flopped.

9 MS. BREWINGTON: Is that what it is?

10 MS. CSIZMADIA: I think 4 is last. I don't  
11 know what this is, but...

12 MS. BREWINGTON: It's actually stapled  
13 wrong.

14 **A. You meant page 4?**

15 Q. Page 4 to 5 I want you to look at. I'd like  
16 you to look at Keith Robertson's specific job duties from  
17 performance plan.

18 **A. (Complied.)**

19 MS. CSIZMADIA: Can we clarify what this  
20 is, what this document is?

21 MS. BREWINGTON: I can certainly ask him,  
22 but I'm not sure he knows what the document is.

23 Off the record.

24 (Discussion off the record.)

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1 BY MS. BREWINGTON:

2 Q. What I have presented to you is a document that  
3 was submitted by DNREC to the EEOC during Ann Breslin's  
4 investigation.

5 **A. Okay.**

6 Q. Have you had an opportunity to review  
7 Keith Robertson's specific job duties?

8 **A. Yes.**

9 Q. Would you agree with me that the job duties for  
10 Keith Robertson are similar to that of Ann Breslin?

11 **A. They are similar with some differences.**

12 Q. Do you want to tell me about the differences?

13 **A. The difference that I see is primarily in the**  
14 **geologic technical support field because I believe that**  
15 **at least my recollection with Keith's education was that**  
16 **he had a geology degree. So apparently he was being**  
17 **utilized for his geology knowledge and experience on some**  
18 **projects.**

19 Q. What was Ann's degree in, do you know?

20 **A. I don't know.**

21 Q. Could it be that Keith Robertson was utilized  
22 specifically for his degree and Ann was utilized  
23 specifically for hers?

24 MS. CSIZMADIA: I would object to that as

7 (Pages 22 to 25)

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1 speculative.

2 MS. BREWINGTON: You can answer.

3 **A. I would say that Keith was because he had the**

4 **geology.**

5 Q. But you're not sure about Ann?

6 **A. I'm not sure about Ann.**

7 Q. And Ann reported directly to you?

8 **A. Yeah. I mean, you asked for the difference.**

9 **That's the difference I see.**

10 Q. Were you aware of the discrepancies in pay

11 between Ann Breslin and Keith Robertson?

12 **A. Again, like I stated earlier, vaguely. I**

13 **understood that there was some differences which this**

14 **whole thing revolves around. That's about as much as I**

15 **know about it.**

16 Q. You became Ann's manager in 2000?

17 **A. Correct.**

18 Q. Around what time did you first become aware of

19 the discrepancies between Ann Breslin's pay and

20 Keith Robertson's pay?

21 **A. After she left.**

22 Q. During the time that she worked at DNREC, were

23 you not aware that she had an issue with her pay?

24 **A. I was not aware.**

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1 Q. You mentioned that the first time you learned

2 of Ann's concern about pay was after she left DNREC.

3 **A. I believe so. I think I received a copy of a**

4 **letter that had a law firm's heading on the top of it and**

5 **I became aware that there was a court action underway**

6 **about pay.**

7 Q. That was probably around the time that she

8 left, 2003?

9 **A. After she left. I would say I think probably**

10 **sometime within 2004.**

11 Q. Did Ann ever send you e-mails about her pay and

12 requesting for assistance in trying to get an increase

13 comparable to Keith Robertson?

14 **A. She may have. I'm not aware. I can't**

15 **remember.**

16 Q. I guess I'm kind of concerned or confused

17 because initially you indicated that you weren't aware

18 that she had issues with her pay.

19 **A. Not until she left. So --**

20 Q. But you may have received an e-mail?

21 **A. May have. I don't know.**

22 Q. But you have no recollection of receiving it?

23 **A. I do not have any recollection of receiving**

24 **one. I'm not saying she didn't send me one. I just**

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1 **don't remember if she did.**

2 Q. But you have work e-mail here?

3 **A. Uh-huh.**

4 Q. How often do you check it?

5 **A. Every day.**

6 Q. And you receive e-mails from employees?

7 **A. Every day.**

8 Q. You send out e-mails from that same --

9 **A. If it warrants a response, yes, I respond, yes.**

10 Q. Is there any reason why you wouldn't have

11 responded to an e-mail from Ann regarding her pay?

12 **A. If it didn't involve me personally? I probably**

13 **wouldn't have responded.**

14 Q. Wouldn't it have involved you if you're her

15 manager?

16 **A. Not necessarily. If it was an issue that she**

17 **had with another employee, I would see that between her**

18 **and the employee.**

19 Q. Who assists employees with advanced hire

20 requests and things like that?

21 **A. Normally it's probably HR and the direct**

22 **supervisor.**

23 Q. Did you have a sense of whether Ann Breslin

24 should be making substantially less than Keith Robertson?

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1 **A. Say that again.**

2 Q. Did you have an understanding of whether Ann

3 should be making less than Keith Robertson?

4 **A. No.**

5 Q. Did you have an understanding of whether they

6 should be making the same amount?

7 **A. No, I didn't. Did I understand why they**

8 **weren't? No.**

9 Q. You didn't understand that?

10 **A. Uh-uh.**

11 Q. Is that because they were doing the same job?

12 **A. Probably. They were good ES IIIs.**

13 Q. Did you feel it was fair that Keith Robertson

14 was making more money than Ann Breslin when they were

15 doing the same job?

16 **A. Did I feel it was fair? Actually, the pay -- I**

17 **look at employees' pay between them -- their pay is their**

18 **business just like my pay is my business. I really don't**

19 **get involved in how much the employees are getting paid.**

20 **I personally see that as a decision that's made by other**

21 **people, primarily Human Resources. So it really wasn't**

22 **that much of a concern to me, to be honest.**

23 Q. But I'm asking you now. Retrospectively, do

24 you think that was fair?

8 (Pages 26 to 29)

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1 A. If she was being mistreated, then no, it wasn't  
2 fair.  
3 Q. What is an advanced salary request?  
4 A. I don't know that much about it, again. That's  
5 more for HR to determine, and I always leave it for them.  
6 An employee, once hired, if it's a new  
7 employee, I believe if a new employee is hired, they can  
8 request an advanced salary, and, again, that becomes more  
9 of an issue between them and Human Resources. I as the  
10 manager can prepare an advanced hire or advanced salary  
11 hire request and I send that to Human Resources, but they  
12 have the ultimate say on whether or not it's granted or  
13 not.  
14 Q. Have you done that?  
15 A. I have done it, I think, twice in the whole  
16 time that I have been a manager.  
17 Q. For whom?  
18 A. I did one for Robert Asreen when he was first  
19 hired. Robert is a hydrologist with our branch. And I  
20 did one for an ES IV that I hired and stayed a whole  
21 week. Those, I believe, are the only two that I have  
22 ever done. I'm sorry. I did a third. I did one for  
23 Betsy Rogers who was another hydrologist. I think those  
24 are the only three that I have ever done.

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1 Q. Do you know whether Robert Asreen -- I'm not  
2 sure if I'm saying that right, but do you know whether  
3 his was granted, his request?  
4 A. I think his was.  
5 Q. How about the ES IV that left?  
6 A. His was not.  
7 Q. Is it because he left after four days?  
8 A. I think his request was above what Human  
9 Resources and personnel were willing to pay.  
10 Q. How about Betsy Rogers?  
11 A. I'm not sure whether -- I can't remember if  
12 hers was granted or not.  
13 Q. Did you do an advanced salary request for Ann?  
14 A. I don't think I did. I think because I didn't  
15 hire Ann.  
16 Q. Did you submit any documentation to HR  
17 regarding her salary?  
18 A. No, not that I'm aware of.  
19 (Will Deposition Exhibit No. 4 was marked  
20 for identification.)  
21 THE WITNESS: I guess I did.  
22 BY MS. BREWINGTON:  
23 Q. We're going to mark this as Will 4. Does this  
24 refresh your recollection as to whether you submitted an

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1 advanced hire request for Ann Breslin?  
2 A. Well, it definitely establishes that I did. As  
3 far as refreshing it, no, it doesn't refresh it.  
4 Q. What is this document that I placed in front of  
5 you?  
6 A. It's an advanced hire request for  
7 Ann L. Breslin.  
8 Q. Who's it from?  
9 A. It's from me.  
10 Q. Who is it to?  
11 A. It's to the Human Resources Office.  
12 Q. I'd like to go over the handwriting that we  
13 have on the document. Would it be fair to say that this  
14 is perhaps a draft of the document?  
15 A. Unless it's marked "draft." I don't see it  
16 being marked "draft." Wait a minute. Yes, this is the  
17 one that has my name on it, but it was not drafted by me.  
18 Q. Were you aware of it?  
19 A. Yes.  
20 Q. We will get to who drafted it and everything.  
21 Do you recognize the handwriting?  
22 A. No, I do not. I know it's not mine.  
23 Q. I would hope you recognize your handwriting.  
24 A. That I am sure of.

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1 Q. What I'd like to do is go through the  
2 handwriting and if we could try to figure out, the two of  
3 us, what perhaps is indicated on this document and  
4 hopefully throughout these depositions we will figure out  
5 whose handwriting it is.  
6 A. Okay.  
7 Q. Let me ask you a question first. Have you ever  
8 seen this document before?  
9 A. Yes.  
10 Q. When I say "this document," I mean this  
11 document with the writing.  
12 A. No, I have not seen this document. I saw the  
13 one without the writing.  
14 Q. Perhaps that was the final version of the  
15 document?  
16 A. I don't know.  
17 Q. But you saw some form of this document?  
18 A. I saw this document without the handwriting on  
19 it. I saw this document with the type on it.  
20 Q. At the top left it says, "An advanced hire  
21 salary of 91.8% of midpoint was requested for  
22 Ms. Breslin." Is that accurate?  
23 A. That's what it says.  
24 Q. Then over to the right, it's a bullet. It

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1 says, "Main thrust should be sexual discrimination." Is  
2 that accurate?

3 **A. That's what it says.**

4 Q. Then underneath that it says, "His Master's  
5 counted, yours did not?"

6 **A. That's what it says.**

7 Q. Do you think that we could deduce from the  
8 statement here, "His Master's counted, yours did not?"  
9 that Ann Breslin did not write this?

10 MS. CSIZMADIA: You're asking him to  
11 speculate, so I'm going to object. But go ahead.

12 **A. Say that again. I'm sorry.**

13 Q. I guess what I'm asking is: The handwriting on  
14 this document --

15 **A. I would say just by reading that, I doubt Ann  
16 would have wrote that.**

17 MS. CSIZMADIA: If you could get him to  
18 read the rest of it, too.

19 MS. BREWINGTON: Yes, I am.

20 Q. Underneath that it says, "His Master's counted,  
21 yours did not," question mark, "or just lab experience."  
22 Is that an accurate statement?

23 **A. I see this is saying "or just lab" and it looks  
24 like it could be -- I see x-p-r-n.**

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1 Q. That's fair. Let's go down to the bottom right  
2 above "Justification." It indicates: "Mr. Robertson now  
3 makes \$3,591.67 per month while Ms. Breslin makes  
4 \$3,199.25 per month." Is that accurate?

5 **A. Yes.**

6 Q. Underneath that statement that we just read, it  
7 indicates: "Please elaborate further on Keith regarding  
8 laboratory and scientist experience," question mark.

9 **A. That's what it says.**

10 Q. Then we have over to the right side, bottom  
11 corner, it says, "This appears to be a significant  
12 discrepancy between these two actions which may be  
13 considered as," and then it says something there, but I  
14 think it's cut off, "discrimination."

15 Is that accurate?

16 **A. Uh-huh.**

17 Q. Yes?

18 **A. Yes. Actually it doesn't say "this." It's  
19 "these."**

20 Q. "These two actions"?

21 **A. "These significant" --**

22 Q. I think that --

23 **A. There appears to be, yes. It says, "There  
24 appears to be a significant discrepancy."**

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1 Q. I said, "This appears to be." "There appears  
2 to be a significant discrepancy between these two actions  
3 which may be considered as discrimination." Is that  
4 accurate?

5 **A. Uh-huh.**

6 Q. Who took part in drafting this document?

7 **A. I believe it was Ann.**

8 Q. Did anyone else have any other involvement in  
9 drafting this?

10 **A. I don't know.**

11 Q. We discussed earlier that over to the right  
12 here where it says, "His Master's counted, yours did  
13 not?" that perhaps Ann did not write that. Is that  
14 accurate?

15 **A. Perhaps.**

16 Q. Well, I just want to understand what you said  
17 before. Is that fair to say? Did you say that it's not  
18 likely that she wrote that?

19 **A. Just the way it's worded, it's not likely that  
20 she would have written that.**

21 Q. Can you think of any other person that may have  
22 been involved in this document?

23 **A. From my office? Christina Wirtz.**

24 Q. Who's Christina Wirtz?

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1 **A. She at that time was my supervisor, RPM II.**

2 Q. She may have assisted in this document?

3 **A. No. I don't think she assisted in writing the  
4 document. I think she saw the document after it was  
5 written. Just like I did.**

6 Q. Anyone else?

7 **A. Not from my office. Where it went after it  
8 left this office, I don't know -- I would say it went to  
9 Human Resources. So there's people down there that would  
10 have looked at it.**

11 Q. This document is from you, correct?

12 **A. Yes. It says from Paul Will. Yes.**

13 Q. Did you support Ms. Breslin's request for an  
14 increase in her salary?

15 **A. Yes, I did.**

16 Q. Why is that?

17 **A. I support anybody that wants more money.**

18 Q. Anybody? Even if they don't deserve it?

19 **A. If they can justify it that they think they  
20 deserve it, I'll support them.**

21 Q. Did you feel that she could justify that she  
22 deserved an increase?

23 **A. After I read this, yeah. That's why I signed  
24 it.**

10 (Pages 34 to 37)

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1 MS. BREWINGTON: We will have this marked  
2 as Will 5.  
3 (Will Deposition Exhibit No. 5 was marked  
4 for identification.)  
5 BY MS. BREWINGTON:  
6 Q. Are you confused?  
7 A. No.  
8 Q. What is this document that I put in front of  
9 you?  
10 A. **It looks like the same one.**  
11 Q. What's the difference between them, though?  
12 A. **Signatures are different.**  
13 Q. What signatures?  
14 A. **Well, this document has handwriting all over**  
15 **it. This one doesn't.**  
16 MS. BREWINGTON: For the record, he's  
17 pointing to 4 having the handwriting all over it and  
18 5 not having the handwriting all over it.  
19 THE WITNESS: Actually, this is a different  
20 document.  
21 Q. It is?  
22 A. **Yes. Second paragraph starts with "According"**  
23 **on Exhibit 4. This exhibit starts with "Pursuant."**  
24 **"Justification" is bolded in this one. It's not in this**

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1 **one. You want me to keep going?**  
2 Q. No. I guess I want to know from you, you saw a  
3 version of this document; is that correct?  
4 A. **Uh-huh.**  
5 Q. Do you know what you saw? Did you see the  
6 final copy?  
7 A. **I saw the copy that was given to me.**  
8 Q. Do you know whether it was this copy, based on  
9 your review?  
10 A. **I can't remember. No.**  
11 Q. Were you aware that this document was going to  
12 be sent to Human Resources?  
13 A. **Yes. At least the one I reviewed.**  
14 Q. So this was under your authorization; is that  
15 fair to say?  
16 A. **Sure, yes.**  
17 Q. Where it says "Justification," underneath  
18 that --  
19 A. **Which document?**  
20 Q. Exhibit 5. It indicates, quote, Ann Breslin's  
21 experience and knowledge clearly exceed the minimum  
22 requirements for an ES III." Do you see where it says  
23 that?  
24 A. **Uh-huh.**

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1 Q. Would you agree with that statement?  
2 A. **Yes.**  
3 Q. It also indicates, I believe it's the last  
4 sentence on that first page, that Ms. Breslin has 7.5  
5 years of scientist experience with SIRB.  
6 A. **7.4?**  
7 Q. 7.4. What did I say?  
8 A. **5.**  
9 Q. "In addition to her 7.4 years of environmental  
10 scientist experience with the SIRB, Ann Breslin has  
11 2.243 years of related experience."  
12 Would you agree with that statement?  
13 A. **Yes.**  
14 Q. Now, this memo is dated May 17th, 2001. We  
15 have already addressed the fact that Ms. Breslin's  
16 employment began in '94. It ended in or around 2003. In  
17 2001 she had worked for DNREC for approximately five  
18 years; is that fair to say?  
19 A. **As a merit employee. We're not counting**  
20 **seasonal. She started in '94. 2001 would be seven**  
21 **years.**  
22 Q. Yes, you're right. Seven years. Okay.  
23 After seven years of working at DNREC, did  
24 you consider her an entry-level employee?

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1 A. **No.**  
2 Q. Did you feel that she should be paid as an  
3 entry-level employee?  
4 A. **No.**  
5 Q. Did you support her request to increase her  
6 salary so that it was comparable with Keith Robertson?  
7 A. **At the time I didn't really know that this was**  
8 **for Keith or involved Keith. I supported her request for**  
9 **advanced salary, yes.**  
10 MS. CSIZMADIA: Do you want to take a  
11 break?  
12 (A recess was taken.)  
13 (Will Deposition Exhibit No. 6 was marked  
14 for identification.)  
15 BY MS. BREWINGTON:  
16 Q. Take a look at this document. It's will 6.  
17 A. **(Complied.)**  
18 **Okay.**  
19 Q. I think what's going to be easiest for us to  
20 do, I'd like to review this document. It's a two-page  
21 document. It looks like both pages are the same except  
22 for the top of the pages. But we will go through both  
23 documents.  
24 Take a look at the first page of Will 6.

11 (Pages 38 to 41)



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1 At the bottom, would you agree that that's an e-mail from  
 2 Ann Breslin?  
 3 **A. At the bottom?**  
 4 Q. At the bottom.  
 5 **A. Very bottom?**  
 6 Q. I think it says, "For what it is worth." I  
 7 think that is probably "For what it is worth."  
 8 **A. Yes, I would agree.**  
 9 Q. Do you know who she sent that to? Can you  
 10 tell, based on reviewing this document?  
 11 **A. It doesn't have a "to" that I can see.**  
 12 Q. I just want to make sure I wasn't missing  
 13 anything.  
 14 The next message here --  
 15 **A. The one above it?**  
 16 Q. Yes. Could you read that aloud for me?  
 17 **A. "I modified the intro and justification section**  
 18 **to be consistent with my last email regarding requesting**  
 19 **an advanced hire based on the promotion (increase in**  
 20 **paygrade) you received as part of last year's maintenance**  
 21 **review. I will forward you that last email again where I**  
 22 **referenced all the applicable merit rules. You did a**  
 23 **very good job describing your experience."**  
 24 Q. Who is that e-mail from?

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1 **A. It looks like it's from Alex Rittberg.**  
 2 Q. Does that indicate who it was sent to?  
 3 **A. Not that I can see.**  
 4 Q. Based on the content of that e-mail, is it fair  
 5 to say that it was sent to Ann Breslin?  
 6 **A. I can't tell. It doesn't say "to."**  
 7 Q. Let's go to the next one.  
 8 **A. The one above it?**  
 9 Q. Yes. Go ahead and read that one out loud for  
 10 me.  
 11 **A. Where it starts with "Paul"?**  
 12 Q. Yes.  
 13 **A. "Paul - I will print out a copy for your**  
 14 **review - since it will be coming from you.**  
 15 **"Alex and I have had LONG discussions about**  
 16 **this over the past year and he wanted to make an attempt**  
 17 **to work on this for me since he has managed to get every**  
 18 **advanced hire approved to a point. I fear weird doing**  
 19 **this but it may be worth a try since I am the only ES III**  
 20 **in sirb STILL making entry level...please forward the**  
 21 **paper to Christina for review after you are done with it**  
 22 **so we can get this moving...for what it is worth...AB."**  
 23 Q. Who wrote that e-mail?  
 24 **A. Ann Breslin.**

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1 Q. Who did she send it to?  
 2 **A. It was sent to me.**  
 3 Q. Was it sent to anyone else or cc'd to anyone  
 4 else?  
 5 **A. Doesn't look like it.**  
 6 Q. Is there an attachment to the e-mail?  
 7 **A. Not that I can see. Well, yeah. Advanced hire**  
 8 **for Ann Breslin including Alex's**  
 9 **corrections.doc.beyond.RTF.**  
 10 Q. It indicates in here that someone did a good  
 11 job describing your experience. It says, "You did a very  
 12 good job describing your experience." And that was a  
 13 message from Alex, correct?  
 14 **A. Uh-huh.**  
 15 Q. Alex indicates that he modified the intro and  
 16 justification section to be consistent with his last  
 17 e-mail. Is that also correct?  
 18 **A. That's what it says.**  
 19 Q. Then the e-mail was sent from Ann to you  
 20 enclosing the attachment; is that also correct?  
 21 **A. Looks to be, yes.**  
 22 Q. Do you know whether you reviewed this document?  
 23 **A. I don't know.**  
 24 Q. Do you know whether you forwarded anything to

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1 Christina Wirtz?  
 2 **A. I can't remember if I did or not.**  
 3 Q. The date of this e-mail at the top is Thursday,  
 4 May 17th, 2001. Do you see that?  
 5 **A. Yes, I do.**  
 6 Q. If we go back to Will 5, that's also right in  
 7 front of you right there, that's the same exact date,  
 8 May 17, 2001.  
 9 **A. Correct.**  
 10 Q. Is it fair to say that the e-mail is  
 11 referencing the advanced hire request dated May 17, 2001?  
 12 **A. Yes.**  
 13 Q. Turning to the next page, if you will, I'd like  
 14 to just go over the top because if you agree with me, the  
 15 bottom portions are actually on the first page.  
 16 **A. Yeah. They kind of go in reverse where the**  
 17 **most current one, I guess, is on the top of page 1 and**  
 18 **the first one that was actually done is your second.**  
 19 Q. Kind of confusing.  
 20 At the top of the page is an e-mail. Do  
 21 you see that?  
 22 **A. Is this the one from Christina Wirtz?**  
 23 Q. That's what it looks like to me, but I'm going  
 24 to ask you about it. It's an e-mail from

12 (Pages 42 to 45)

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1 Christina Wirtz, correct?  
2 **A. Yes.**  
3 Q. It's to?  
4 **A. Alex and Ann, cc'd to me.**  
5 Q. And the subject is?  
6 **A. "Here you go."**  
7 Q. And the date?  
8 **A. Thursday, May 17, 2001.**  
9 Q. And the attachment?  
10 **A. Advhire.hire.doc.beyond.RTF.**  
11 Q. If you could read it for me.  
12 **A. "This looks great! Ann, you are so**  
13 **accomplished, and should definitely be compensated**  
14 **accordingly. I made minor edits, a few periods here and**  
15 **there, and saved it in your alb file as on footer. Also**  
16 **noticed that the number of years are missing from 4**  
17 **through 8, with no description for 8."**  
18 Q. Now, would you agree with me that both Ann and  
19 Christina Wirtz assisted in drafting the May 17th, 2001,  
20 hire request?  
21 **A. Yes.**  
22 Q. Would you also agree that you saw some form of  
23 this advanced hire request before it was sent to Human  
24 Resources?

Page 47

1 **A. Yes.**  
2 Q. When memos are sent out in your office from  
3 your area, is it uncommon for someone else to draft them  
4 and then for it to come from you?  
5 **A. That is uncommon, yes.**  
6 Q. Is there a reason why you did not draft the  
7 advanced hire request?  
8 **A. No. I mean, again, this is something that Ann**  
9 **was pursuing, not necessarily myself.**  
10 Q. But you supported it.  
11 **A. Yes, I supported it.**  
12 Q. Did you receive a response to the advanced hire  
13 request?  
14 **A. I don't recall if I did or not.**  
15 Q. Do you know whether or not she received it?  
16 **A. I don't, no.**  
17 **(Will Deposition Exhibit No. 7 was marked**  
18 **for identification.)**  
19 **BY MS. BREWINGTON:**  
20 Q. Have you had an opportunity to review this?  
21 **A. Not yet. Hold on. Okay.**  
22 Q. Does this help refresh your recollection as to  
23 whether her advanced hire request was approved or denied?  
24 **A. Yes, it does.**

Page 48

1 Q. Tell me about that.  
2 **A. That obviously it was not approved.**  
3 Q. Did you receive anything other than a memo  
4 regarding the advanced hire request?  
5 **A. I don't recall if I did or not.**  
6 Q. Who is Marjorie Crofts? It's from Marjorie?  
7 **A. Yes.**  
8 Q. Can we back up? We have to basically identify  
9 this document because I don't know what I'm looking at  
10 when I'm reading the transcript. It's a memorandum,  
11 correct? And it's to you from Marjorie Crofts, the  
12 director's office, and it's dated May 31st, 2001,  
13 subject: Advanced hire request for Ann Breslin. Is that  
14 correct?  
15 **A. Correct.**  
16 Q. Do you recall informing Ann about the denial of  
17 the advanced hire request?  
18 **A. I cannot remember if I did or not.**  
19 Q. Did you have any discussions with Ann?  
20 **A. Can't remember if I did or not.**  
21 Q. Did you have any discussions with anyone?  
22 **A. Can't remember if I did or not.**  
23 Q. So once you received this denial, you didn't  
24 pursue it any further?

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1 **A. I don't believe I did.**  
2 **(Will Deposition Exhibit No. 8 was marked**  
3 **for identification.)**  
4 **BY MS. BREWINGTON:**  
5 Q. I have just placed in front of you what we will  
6 mark as Will 8. The title of this document is "Delaware  
7 Department of Natural Resources & Environmental Control  
8 Administrative Policies and Procedures." The subject is  
9 "D-0918 - Advanced Salary." The section is "D-0900,  
10 Personnel Management." It was issued October 23rd, 2001;  
11 revised November 13th, 2001.  
12 Is that all accurate?  
13 **A. Yes.**  
14 Q. Do you know whether this form was created by  
15 Human Resources?  
16 **A. I don't know.**  
17 Q. Have you ever seen this form before?  
18 **A. I have seen a lot of policies and procedures.**  
19 **I don't know if I have actually read this one.**  
20 Q. Is it fair to say that it's a policy regarding  
21 advanced salaries?  
22 **A. Yes.**  
23 Q. Do you see where it says, "Subject to available  
24 funding, advanced salaries should be primarily used

13 (Pages 46 to 49)

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1 for:"?

2 **A. Yes, I see that.**

3 Q. It says, "A. Retention"?

4 **A. Uh-huh.**

5 Q. And then a ways down it says, "B. New Hire

6 Recruiting." Do you see that?

7 **A. Yes.**

8 Q. If you turn to the next page, it indicates:

9 "C. Internal Equity."

10 **A. Yes.**

11 Q. Do you have an understanding of what that

12 means, internal equity?

13 **A. No, I don't.**

14 Q. If you could read for me underneath "C.

15 Internal Equity."

16 **A. "To maintain internal equity to the degree**

17 **possible, the following criteria and or actions are**

18 **implemented:**

19 **"No advanced salary will be permitted for**

20 **those incumbents whose critical reclassification request**

21 **results in a promotion greater than three pay grades.**

22 **"Technical positions are a priority.**

23 **"The department will selectively use a Peer**

24 **Review process to scrutinize education, experience and**

Page 51

1 **training to support a request."**

2 Q. Was Ann Breslin's position as an Environmental

3 Scientist III a technical position?

4 **A. Yes, it was.**

5 Q. Is it fair to say that based on this advanced

6 salary policy, that technical positions are given a

7 priority?

8 **A. Yes. It says, "technical positions are a**

9 **priority."**

10 Q. How about that next bullet or diamond? It

11 says, "the department will selectively use a Peer Review

12 process to scrutinize education, experience and training

13 to support a request." And that's located under the

14 "Internal Equity" section. Do you know whether the

15 Department used some sort of peer review for Ann Breslin?

16 **A. I don't know if they did or not.**

17 Q. Do you know anything about the peer review

18 process?

19 **A. No, I don't.**

20 Q. Now, HR makes the determination as to whether

21 someone receives an advanced --

22 **A. That's my understanding, yes.**

23 Q. When a manager submits the advanced salary

24 request, do you have an understanding of the emphasis

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1 that is placed on the manager's recommendation?

2 **A. Yes, I do. But it's ultimately up to HR**

3 **whether or not they support that.**

4 Q. But you said you do. Is there an emphasis on

5 the manager's request for an advanced hire?

6 **A. I don't know.**

7 Q. But the decision is solely made by Human

8 Resources?

9 **A. My understanding is. Even if I fully support**

10 **it 100 percent, they still have the ultimate call. And I**

11 **understand that.**

12 Q. Let's go back to an exhibit. We're going to

13 look at 5. HR makes the final determination; is that

14 correct?

15 **A. As I understand it, yes.**

16 Q. Is it your understanding that HR bases its

17 determination on what's indicated in the --

18 **A. Advanced hire request.**

19 Q. And the information submitted from the advanced

20 hire request comes from the supervisor?

21 **A. Supposed to, yes.**

22 Q. How familiar is Human Resources with each --

23 let's be specific. How familiar is Human Resources

24 familiar with the environmental scientist job?

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1 MS. CSIZMADIA: Speculating. I object. Go

2 ahead.

3 **A. To the point that they're familiar with the**

4 **principal accountabilities that they have and the**

5 **policies that they administer, the knowledge and**

6 **experience required, the principal accountabilities I**

7 **would say to that point.**

8 Q. You can put that aside.

9 Do you know whether Ann Breslin ever

10 received a salary comparable to Keith Robertson at any

11 time before she ended her employment?

12 **A. Did she receive a salary -- I wasn't aware of**

13 **exactly what their salaries were, so I don't know.**

14 Q. But do you know whether or not she ever

15 received an advanced hire request or anything like that?

16 **A. I know from this one that was done that she**

17 **wasn't. I know from Marge Crofts saying she didn't.**

18 Q. But you don't know of anything else going on

19 after that with her salary?

20 **A. Not that I'm aware of.**

21 **(Will Deposition Exhibit No. 9 was marked**

22 **for identification.)**

23

24 BY MS. BREWINGTON:

14 (Pages 50 to 53)



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1 Q. I just put in front of you a document that  
2 we're going to mark as Will 9. Would you agree with me  
3 that that is an e-mail?  
4 **A. Yes, it is.**  
5 Q. It's from Ann Breslin, correct?  
6 **A. Correct.**  
7 Q. And it was sent Wednesday, September 11th,  
8 2002?  
9 **A. Correct.**  
10 Q. It's to you, Christina Wirtz, who's above you,  
11 correct?  
12 **A. Correct.**  
13 Q. Or who was at the time.  
14 **A. That's right.**  
15 Q. And Alex Rittberg.  
16 **A. Correct.**  
17 Q. Now, Alex was also a Program Manager I; is that  
18 correct?  
19 **A. That's correct.**  
20 Q. He did not have a direct reporting relationship  
21 with Ann?  
22 **A. Yes, he did.**  
23 Q. Did he have it at this time?  
24 **A. I'm not quite sure.**

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1 Q. He did have it after you, though?  
2 **A. After me. I cannot remember when I stopped and**  
3 **he started. Could have been around this time. I'm not**  
4 **sure.**  
5 Q. The subject is "Personnel Issues -  
6 CONFIDENTIAL."  
7 **A. Correct.**  
8 Q. "Importance," Sensitivity," "High  
9 Confidential."  
10 Go ahead and read this document for me.  
11 **A. "Paul, Christina, Alex - I need to update all**  
12 **of you on the steps that I have taken and will be taking**  
13 **in order to attempt to settle the pay inequity issues.**  
14 **Yesterday I retained an attorney to represent me in this**  
15 **matter. He will be filing a Grievance with the State for**  
16 **me either today or tomorrow. Later today I will be**  
17 **taking a few hours off to file a claim with the**  
18 **Department of Labor under the Equal Pay Act of 1963.**  
19 **According to my attorney, the DOL will be comparing my**  
20 **pay to those ES IIIs in SIRB (not ES IIIs in DNREC) who**  
21 **complete the same duties (namely Qazi and Keith) who are**  
22 **being paid substantially more per year.**  
23 **"I want to thank the three of you for**  
24 **supporting me over the past few years, either by drafting**

Page 56

1 **memos on my behalf or by verbally supporting me in my**  
2 **efforts. I had not wanted to take this step but I have**  
3 **been unable to avoid this action due to DNREC Personnel's**  
4 **attitude in this matter.**  
5 **"Thanks - Ann."**  
6 Q. Earlier in your deposition you indicated that  
7 you weren't aware of any pay issues until after she left.  
8 This document was sent to you. Does this help to refresh  
9 your recollection on whether there were pay issues with  
10 Ann while she was employed with DNREC?  
11 **A. Yes, it does.**  
12 Q. The second paragraph indicates: "I want to  
13 thank the three of you for supporting me over the past  
14 few years, either by drafting memos on my behalf or by  
15 verbally supporting me in my efforts."  
16 Would you agree that you supported Ann in  
17 her requests for an increase in her salary?  
18 **A. Yes.**  
19 Q. I think my last question was did you support a  
20 request, and you agreed that you did. Can you tell me  
21 why you supported her request?  
22 **A. Because over the years I thought she did a good**  
23 **job with the Department, and I believe if someone has an**  
24 **issue and they feel that they're right, I took a look at**

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1 **the facts and understood them. So I supported her.**  
2 MS. BREWINGTON: I don't have anything  
3 further.  
4 BY MS. CSIZMADIA:  
5 Q. Just a couple questions.  
6 Drawing your attention to Will 2, do you  
7 know whether these environmental science series  
8 information, whether it's the current information or  
9 whether it's the information that was applicable when Ann  
10 was here?  
11 **A. Well, Lori, is that right? If you got this off**  
12 **the Web you said, then it's got a 6/22 print date on it.**  
13 **It should be the most current.**  
14 Q. Drawing your attention to the last page, does  
15 this indicate that information may have changed over the  
16 years?  
17 **A. Yes. In some cases, yes. It looks like it has**  
18 **changed on every one but maybe V.**  
19 Q. Drawing your attention to Will No. 5, whose  
20 initials are after your name and after Christina's name?  
21 **A. It looks like -- from what I can recollect,**  
22 **that looks like an AR. So it looks like it could be**  
23 **Alex's.**  
24 Q. Are they your initials?

15 (Pages 54 to 57)

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1 **A. They're not my initials, no.**

2 Q. Who did you say wrote that document?

3 **A. This was drafted by Ann.**

4 Q. Did you do any independent research to

5 substantiate the information in it?

6 **A. No. I simply reviewed it.**

7 Q. You told Lori that the information submitted in

8 the advanced hire request usually is supposed to come

9 from the supervisor. What did you mean by that?

10 **A. Well, just that the advanced hire requests are**

11 **normally prepared -- I know in my experience as manager,**

12 **once a person is hired, if they request an advanced hire**

13 **request, that's usually prepared by the manager after**

14 **consulting with the person requesting the advanced hire**

15 **request. That's how they obtain some additional**

16 **information.**

17 Q. Just one more question, I believe. Lori asked

18 you whether you felt it was personally fair the situation

19 with Ann's pay. Has it been your experience that in your

20 personal interpretation of fairness, has the application

21 of the merit rules always resulted in fair results to

22 you?

23 **A. Personally? Have they always resulted in**

24 **fairness? No.**

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1 Q. Why do you say that?

2 **A. Just personal preference. My belief of a**

3 **person whose work abilities could be sometimes higher**

4 **than that that Human Resources might think for whatever**

5 **reason.**

6 MS. CSIZMADIA: Thank you. I don't have

7 any other questions.

8 MS. BREWINGTON: I'd like to take a short

9 break to discuss and then I have a few more.

10 (A recess was taken.)

11 MS. BREWINGTON: I don't have anything

12 further.

13 (Deposition concluded at 11:45 a.m.)

14 - - - - -

15

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23

24

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1 TESTIMONY

2

3 DEPONENT: PAUL W. WILL PAGE

4 BY MS. BREWINGTON..... 2

5 BY MS. CSIZMADIA..... 57

6

7 EXHIBITS

8

9 WILL DEPOSITION EXHIBIT NO. MARKED

10 1 - A two-page document entitled, "Sections

and Branches"..... 11.

11

12 2 - A multi-page document entitled,

"State of Delaware Class Series

Description Environmental Science Series"..... 16

13

14 3 - A five-page document entitled,

"Breslin v. State of DE/Department of

Natural Resources, Case No.:

0210667/17CA300024"..... 22

15

16 4 - A multi-page typewritten document

with handwritten notes..... 31

17

18 5 - A multi-page document entitled,

"Memorandum," dated May 17, 2001..... 38

19

20 6 - Two pages of e-mails..... 41

21

22 7 - A memorandum dated May 31, 2001..... 47

23

24 8 - Administrative Policies and Procedures

of DNREC..... 49

9 - An e-mail dated September 11, 2002..... 53

ERRATA SHEET/DEPONENT'S SIGNATURE PAGE 61

CERTIFICATE OF REPORTER PAGE 62

Page 61

REPLACE THIS PAGE

WITH THE ERRATA SHEET

AFTER IT HAS BEEN

COMPLETED AND SIGNED

BY THE DEPONENT

16 (Pages 58 to 61)

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CERTIFICATE OF REPORTER

STATE OF DELAWARE)

NEW CASTLE COUNTY)

I, Kimberly A. Hurley, Registered Professional Reporter and Notary Public, do hereby certify that there came before me on the 23rd day of June, 2006, the deponent herein, PAUL W. WILL, who was duly sworn by me and thereafter examined by counsel for the respective parties; that the questions asked of said deponent and the answers given were taken down by me in Stenotype notes and thereafter transcribed by use of computer-aided transcription and computer printer under my direction.

I further certify that the foregoing is a true and correct transcript of the testimony given at said examination of said witness.

I further certify that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

Kimberly A. Hurley  
Certification No. 126-RPR  
(Expires January 31, 2008)

DATED:

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Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ANN L. BRESLIN, )  
 )  
Plaintiff, )  
 )  
v. ) C.A. No. 05-290  
 )  
STATE OF DELAWARE, )  
DEPARTMENT OF NATURAL )  
RESOURCES & ENVIRONMENTAL )  
CONTROL, )  
 )  
Defendant. )

Deposition of E. ALEXANDER RITTBERG taken pursuant to notice at the offices of DNREC, 391 Lukens Drive, New Castle, Delaware, beginning at 1:00 p.m., on Friday, June 23, 2006, before Kimberly A. Hurley, Registered Merit Reporter and Notary Public.

APPEARANCES:

LORI BREWINGTON, ESQUIRE  
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Wilmington, Delaware 19806  
for the Plaintiff

VALERIE S. CSIZMADIA, DEPUTY ATTORNEY GENERAL  
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Carvel State Office Building  
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for the Defendant

ALSO PRESENT:

ANN L. BRESLIN

WILCOX & FETZER  
1330 King Street - Wilmington, Delaware 19801  
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Page 2

1 E. ALEXANDER RITTEBERG,  
2 the witness herein, having first been  
3 duly sworn on oath, was examined and  
4 testified as follows:  
5 BY MS. BREWINGTON:  
6 Q. Good afternoon, Alex.  
7 A. Hi.  
8 Q. I have the privilege of taking your deposition  
9 today with respect to Ann Breslin's discrimination charge  
10 against DNREC. Have you ever testified in a deposition  
11 before?  
12 A. No.  
13 Q. This is how it works: I'm going to ask you a  
14 series of questions. I'll make every effort to ask them  
15 one at a time. If for some reason you don't understand  
16 the question, just let me know and I'll repeat it or  
17 rephrase it. If you answer the question, I'll assume  
18 that you and I both understood both the question and  
19 answer. Okay?  
20 A. Okay.  
21 Q. If at any time you need to take a break, just  
22 let me know. The court reporter is here and she will be  
23 taking down your responses to my questions. It's very  
24 important when answering my questions that your answers

Page 3

1 are yes and no as opposed to uh-huhs and uh-uhs because  
2 it's very difficult for that to appear on the record. We  
3 want the record to be as clear as possible.  
4 Do you understand?  
5 A. Yes.  
6 Q. Okay, great. At times DNREC's attorney will  
7 object to some of the questions I ask. That is entirely  
8 proper. The only thing that I ask is that you answer the  
9 question unless she specifically advises you not to  
10 answer. Okay?  
11 A. Okay.  
12 Q. Please state your full name for the record.  
13 A. Alex Rittberg.  
14 Q. Do you have a middle name?  
15 A. Alexander is my middle name.  
16 Q. What's your first name?  
17 A. Earl.  
18 Q. You don't like it?  
19 A. You have to talk to my mom about that.  
20 Q. What did you do in preparation for your  
21 deposition testimony today?  
22 A. I met with Val.  
23 Q. Did you do anything else?  
24 A. I reviewed some old e-mail.

Page 4

1 Q. Tell me about those old e-mails. What do you  
2 remember about the e-mails?  
3 A. What do I remember about them.  
4 Q. How many did you review, like a couple, one,  
5 two?  
6 A. About five, I believe.  
7 Q. Were they in your e-mail account?  
8 A. Yes.  
9 Q. Were they regarding Ann Breslin?  
10 A. Yes.  
11 Q. Tell me what about Ann Breslin.  
12 A. They were about -- at the time there was a  
13 decision made in our department where environmental  
14 scientists received a bump-up due to a maintenance  
15 review, and the e-mails were about trying to get existing  
16 staff a leveling-up in salary or a higher salary if they  
17 were here for a certain number of years for that bump-up  
18 decision.  
19 Q. Is that something you sent out to Human  
20 Resources?  
21 A. Yes.  
22 Q. Did you get a response?  
23 A. Yes, I did.  
24 Q. What was that, if you can remember?

Page 5

1 A. The response was that they did not -- they  
2 issued a policy that year that said you could not get --  
3 put in for, get an advanced hire as part of a maintenance  
4 review promotion.  
5 Q. Did you review any other documents?  
6 A. I can't remember.  
7 Q. I'd like you to take me through your work  
8 experience, and we will start with here specifically at  
9 DNREC and then we will go to your previous work  
10 experience. Is that okay?  
11 A. Sure.  
12 Q. When did you begin working with DNREC?  
13 A. In December of '91.  
14 Q. What was your job title?  
15 A. I started as an environmental engineer in the  
16 Solid and Hazardous Waste Branch.  
17 Q. That branch is different than SIRB?  
18 A. Yes. That's down in the Dover office.  
19 Q. Were you promoted?  
20 A. Yes. I was promoted to an environmental  
21 program manager in, I believe, 1992. And I was a program  
22 manager in the Solid and Hazardous Waste Branch through  
23 1998. And then in September of 1998 I joined the Site  
24 Investigation and Restoration Branch.

2 (Pages 2 to 5)



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1 Q. And that's SIRB?  
2 **A. And that's SIRB.**  
3 Q. As a program manager?  
4 **A. As a Program Manager I.**  
5 Q. And that's your current position?  
6 **A. No. In 2005, January 2005, I was promoted to**  
7 **an Environmental Program Manager II of the Tank**  
8 **Management Branch.**  
9 Q. And that's a different branch?  
10 **A. That's a different branch but still in this**  
11 **building.**  
12 Q. You have experience in the solid hazardous --  
13 **A. Solid and Hazardous Waste Management Branch.**  
14 Q. And SIRB?  
15 **A. Right.**  
16 Q. And now Tank Management?  
17 **A. Yes.**  
18 Q. You're a program manager?  
19 **A. Yes.**  
20 Q. You have been a program manager since January  
21 of 2005?  
22 **A. Program Manager II. That's the branch manager**  
23 **level.**  
24 Q. What did you do prior to working for DNREC?

Page 7

1 **A. I was in the Army from September of '87 through**  
2 **'91.**  
3 Q. Prior to that?  
4 **A. Prior to that I was in college at the**  
5 **University of Delaware.**  
6 Q. Did you receive your Bachelor's degree?  
7 **A. Yes. In chemical engineering.**  
8 Q. Do you have a Master's degree?  
9 **A. No, I do not.**  
10 Q. How familiar are you with the details of  
11 Ms. Breslin's lawsuit?  
12 **A. I read the complaint when I met with Val.**  
13 Q. Was that the first time that you learned of the  
14 details of the lawsuit?  
15 **A. Yes.**  
16 Q. Tell me a little bit about DNREC in terms of  
17 its purposes or function.  
18 **A. DNREC's function is to protect human health and**  
19 **the environment, to promote conservation of natural**  
20 **resources, to ensure recreational activities are provided**  
21 **from our park system. We have quite a variety of**  
22 **activities that we're involved with.**  
23 Q. You mentioned three of the different branches,  
24 correct?

Page 8

1 **A. Three of the different -- branches that I**  
2 **worked in?**  
3 Q. Yes. Three of the different branches of DNREC.  
4 That's what you mentioned so far.  
5 **A. As far as describing DNREC's activities or --**  
6 Q. Let me start all over.  
7 **A. Sure.**  
8 Q. I'm going to ask you about the different  
9 branches in DNREC, and I wanted to ask you whether you  
10 previously discussed at least three of those branches.  
11 Is that fair to say?  
12 **A. Which three?**  
13 Q. Solid and Hazardous Waste?  
14 **A. Yes, that is correct.**  
15 Q. SIRB and Tank Management?  
16 **A. Right.**  
17 Q. And there are other branches?  
18 **A. Yes.**  
19 Q. What are some of the other branches?  
20 **A. Some of the other branches -- why don't we**  
21 **start in our division. We have a whole Air Quality**  
22 **section, Air Resources section, and within that there's**  
23 **Permitting branches, Air Monitoring or Surveillance, and**  
24 **Planning. Then we have an Emergency Response Branch**

Page 9

1 **which is now called the Emergency Prevention and -- EPRB.**  
2 **They changed their name. Emergency Prevention Response**  
3 **Branch. And they do emergency response to spills, things**  
4 **of that type of nature.**  
5 Q. Okay.  
6 **A. We have a few other divisions within DNREC. I**  
7 **don't know how far you want me to go.**  
8 Q. Tell me.  
9 **A. We have a Water Resources Division, and that**  
10 **contains our Groundwater Protection Branch, our Surface**  
11 **Water Discharge Branch, our Wetlands Section, our**  
12 **Environmental Laboratory. Then there's probably a few**  
13 **others within that branch and I can't remember.**  
14 Q. That's enough for that one.  
15 **A. We have a Division of Soil and Water and that's**  
16 **where the Erosion and Sediment Control Program is, as**  
17 **well as something called A-319 Program for nonpoint**  
18 **source pollution. The Dredging Section is also within**  
19 **Soil and Water.**  
20 Q. Any other branches you can think of?  
21 **A. And Parks. I'm not sure how our Parks**  
22 **Department is -- Division is split up. I'd rather not**  
23 **get into that.**  
24 Q. That's fine. So far you have mentioned Solid

3 (Pages 6 to 9)

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1 and Hazardous Waste, SIRB, Tank Management, Air Quality,  
 2 Emergency Response, Water Resource Division.  
 3 **A. Okay.**  
 4 Q. And Soil and Water.  
 5 **A. Okay.**  
 6 Q. Is that correct?  
 7 **A. That's correct. I forgot our enforcement.**  
 8 Q. And Enforcement.  
 9 Now, within those branches what are some of  
 10 the job titles? Do they vary?  
 11 **A. They do, but there's some that are consistent.**  
 12 Q. Tell me about the ones that are consistent.  
 13 **A. There's environmental engineers, environmental**  
 14 **scientists, hydrologists, program managers,**  
 15 **administrative specialists, paralegals, planners. That's**  
 16 **a good start.**  
 17 Q. That is a great start. Let me ask you about  
 18 the environmental scientists.  
 19 **A. Okay.**  
 20 Q. Would it be fair to say that the job duties of  
 21 an environmental scientist in Water Resource may be  
 22 different than the job duties of an environmental  
 23 scientist in SIRB?  
 24 **A. Would it be fair to say that the different --**

Page 11

1 **that there would be a difference in job duties.**  
 2 Q. Yes.  
 3 **A. There would be some differences, yes, but you**  
 4 **could also draw similarities.**  
 5 Q. Tell me about the differences between an  
 6 environmental scientist in SIRB as opposed to an  
 7 environmental scientist in another division.  
 8 **A. Division or branch?**  
 9 Q. Branch.  
 10 **A. Environmental scientist in SIRB -- well, there**  
 11 **could be differences even within the program, but**  
 12 **basically you could be assigned as a project manager for**  
 13 **a site, contaminated site investigation, or a cleanup**  
 14 **project. That could be similar to an environmental**  
 15 **scientist in the Solid and Hazardous Waste Branch. It**  
 16 **may be similar to an environmental scientist -- sometimes**  
 17 **the tank staff gets involved in that type of activity, as**  
 18 **well, but on a smaller scale, dealing with releases from**  
 19 **underground storage tanks.**  
 20 Q. Would it be similar to the environmental  
 21 scientist in Parks?  
 22 **A. In Parks, I don't know how many environmental**  
 23 **scientists they actually have because I haven't worked**  
 24 **there. I know they have some naturalist positions, but**

Page 12

1 **those are probably different.**  
 2 Q. How about environmental scientists in the Air  
 3 Quality Section?  
 4 **A. Environmental scientists in Air Quality could**  
 5 **do some activities that involve collecting ambient air**  
 6 **data or they could be specifically doing risk assessment**  
 7 **type of work or they could be writing regulations.**  
 8 Q. Writing regulations?  
 9 **A. Yes.**  
 10 Q. Is collecting -- I believe you said ambient?  
 11 **A. Uh-huh. Ambient air data.**  
 12 Q. Is that something that a SIRB environmental  
 13 scientist would do as part of their job duties?  
 14 **A. It could come into play as a duty at a site if**  
 15 **they are worried about like dust emissions and the**  
 16 **ambient air quality within a building, if there's some**  
 17 **type of confined entry type of work going on.**  
 18 Q. Is there anything that you can think of that  
 19 the environmental scientists in SIRB -- that is unique to  
 20 just the environmental scientists in SIRB?  
 21 **A. Is unique to the environmental scientists in**  
 22 **SIRB. The process, the administration process, that the**  
 23 **environmental investigation and cleanup activities happen**  
 24 **under, meaning the laws and regulations, are specific to**

Page 13

1 **the SIRB program. Sometimes our programs use those same**  
 2 **regulations as appropriate and relevant regulations that**  
 3 **may apply to the work that they do, but primarily it's**  
 4 **the administrative framework that those regulations fall**  
 5 **under that make it unique to SIRB, meaning that work in**  
 6 **SIRB is supported by a specific set of regulations and**  
 7 **laws, and SIRB staff probably have the most experience**  
 8 **working under those unique laws.**  
 9 Q. So the same laws environmental scientists work  
 10 under are different than the other --  
 11 **A. Yes.**  
 12 Q. -- regulations?  
 13 **A. Yes.**  
 14 Q. In the other departments.  
 15 **A. Uh-huh.**  
 16 Q. Did Ann Breslin ever directly report to you?  
 17 **A. Yes.**  
 18 Q. When was that?  
 19 **A. That was for several months before she left our**  
 20 **department. I can't recall the exact dates.**  
 21 Q. I'll represent to you that she left DNREC in  
 22 2003.  
 23 **A. Okay.**  
 24 Q. In February of 2003. Would it have been

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1 several months prior to that, so probably in 2002 at  
 2 sometime that she reported to you?  
 3 **A. That sounds like the general time frame.**  
 4 Q. Would you say you were familiar with her work  
 5 performance?  
 6 **A. Yes.**  
 7 Q. Tell me about her work performance. What do I  
 8 want to know about it? Is that what --  
 9 **A. Yes, what would you like to know about it?**  
 10 Q. How would you characterize her work? I guess  
 11 I'm coming from not only you as her supervisor but what  
 12 you saw while working at DNREC.  
 13 **A. Ann was a very hard-working person. She**  
 14 **readily accepted new tasks. She could effectively manage**  
 15 **a project and you could tell she really cared about the**  
 16 **work she did.**  
 17 Q. How about Keith Robertson, did he ever report  
 18 directly to you?  
 19 **A. Yes, he did.**  
 20 Q. Do you remember when that was?  
 21 **A. Keith was in my group when I came to SIRB and**  
 22 **then he left for a period of time and then came back, and**  
 23 **I cannot recall those dates.**  
 24 Q. When did you start in SIRB, September of '98?

Page 15

1 **A. '98.**  
 2 Q. Is it fair to say that when you first started  
 3 there in SIRB, that he reported to you?  
 4 **A. Yes.**  
 5 Q. Around September of 1998. And then he left for  
 6 sometime and then he came back and he reported directly  
 7 to you?  
 8 **A. Yes.**  
 9 Q. At some point both Ann Breslin and Keith were  
 10 ES IIIs; is that correct?  
 11 **A. Yes.**  
 12 Q. What are ES IIIs?  
 13 **A. Your question, I'm sorry?**  
 14 Q. What are ES IIIs?  
 15 **A. ES IIIs are a type of level within a job**  
 16 **classification called an environmental scientist.**  
 17 Q. What are some of the job responsibilities of an  
 18 ES III in SIRB?  
 19 **A. An ES III in SIRB is expected to manage a site**  
 20 **investigation or remediation project. They're expected**  
 21 **to work independently with little or minimal supervision.**  
 22 Q. Anything else?  
 23 **A. They could work on a variety of different types**  
 24 **of projects, either state lead project, an EPA-funded**

Page 16

1 **project, a Department of Defense project.**  
 2 Q. Take a look at the second document there. I  
 3 think it's labeled Will 2. I have put in front of you  
 4 what has previously been marked as Will 2. Do you see  
 5 that?  
 6 **A. Yes.**  
 7 Q. It's entitled, "State of Delaware Class Series  
 8 Description Environmental Science Series." I'd like you  
 9 to review the job duties for Environmental Scientist III.  
 10 **A. Okay. (Complied.)**  
 11 **Okay.**  
 12 Q. Now that you have had an opportunity to review  
 13 these job duties, my question is: Are the job duties  
 14 listed here consistent with your understanding of the job  
 15 duties for both Keith and Ann Breslin?  
 16 **A. Yes.**  
 17 Q. And then I want you to turn to the minimum  
 18 qualifications for Environmental Scientist III. It's  
 19 actually on page 5 of 6.  
 20 **A. Keith actually was doing some higher-level**  
 21 **work, as well, in addition to these duties.**  
 22 Q. You want to talk about that? What was he  
 23 doing?  
 24 **A. He was doing things like statewide**

Page 17

1 **investigation of public drinking water supplies, as well**  
 2 **as determining statewide background level for arsenic.**  
 3 Q. You know this because he reported directly to  
 4 you?  
 5 **A. Yes.**  
 6 Q. Is there anything else that he did?  
 7 **A. That's all that I recollect.**  
 8 Q. The minimum qualifications, is a Bachelor's  
 9 degree one of the minimum qualifications for  
 10 Environmental Scientist III?  
 11 **A. A Bachelor's degree in one of the life,**  
 12 **natural, or physical sciences, yes.**  
 13 Q. If you turn to the next page, you will see a  
 14 list at the bottom where it says, "Environmental  
 15 Scientist I," "Environmental Scientist II," and  
 16 "Environmental Scientist III." Minimum qualifications,  
 17 9/91, do you see where it says that?  
 18 **A. Yes.**  
 19 Q. Is it fair to say that these minimum  
 20 qualifications were instituted in September of 1991?  
 21 **A. I would assume that. I'm not sure that's what**  
 22 **that date means there, but it's likely.**  
 23 Q. Ann Breslin had both her Bachelor's and  
 24 Master's degrees; is that correct?

5 (Pages 14 to 17)

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1 **A. I believe so, yes.**

2 Q. What are some of the other minimum

3 qualifications of an ES III?

4 **A. Some other minimum qualifications?**

5 Q. Besides the Bachelor's degree.

6 **A. No. 2 is " experience analyzing data." No. 3**

7 **is "Experience in environmental/natural resource program**

8 **or project management." No. 4 is "Experience**

9 **interpreting and applying environmental laws, rules and**

10 **regulations." No. 5 is "Experience with computers and**

11 **computer information systems."**

12 Q. Ann reported to you sometime in 2002 through

13 the end of her employment in 2003. I'm going to

14 represent that to you because I know you said you weren't

15 sure of the dates.

16 **A. Yes.**

17 Q. But during that time period, my question is:

18 Would you agree that Ann exceeded these minimum

19 qualifications of ES III?

20 **A. 2 through 5 or including the possession of the**

21 **Bachelor's degree or all of them?**

22 Q. All of them.

23 **A. I believe Ann has a Master's degree, so I think**

24 **she exceeded No. 1. "Experience analyzing data," Ann had**

Page 19

1 **several years of experience with the min quals 2 through**

2 **5 based on her experience working in the program at the**

3 **time.**

4 Q. So is your answer yes, she met that minimum

5 qualification or exceeded that minimum qualification?

6 **A. She at least met that. As far as exceeding,**

7 **she had the experience.**

8 Q. How many years of experience has she had at

9 that point?

10 **A. She had at least -- depends on how long she**

11 **worked for the Department. I forget that.**

12 Q. I'll represent to you that she began her

13 employment in '94.

14 **A. Okay.**

15 Q. Based on the fact that she had been employed

16 since '94 and we're talking about the time period of

17 2002, because that's when she reported to you, would you

18 agree that she exceeded the minimum requirement for

19 experiencing and analyzing data at that point?

20 **A. I would say that she had seven, eight years of**

21 **experience, yes.**

22 Q. How about the next one?

23 **A. At that point in -- when are we talking again?**

24 Q. 2002.

Page 20

1 **A. Yes, she had experience at least meeting.**

2 Q. But you wouldn't go so far as to say exceeding

3 with No. 3?

4 **A. It depends.**

5 Q. What does it depend on?

6 **A. It depends how you're defining exceeding and**

7 **having experience. She had at least seven to eight**

8 **years' experience in at least 1 through 4, including**

9 **No. 5, experience with computers.**

10 Q. Would you consider that meeting the minimum

11 qualifications?

12 **A. No. I would consider it exceeding. It depends**

13 **how we're defining these things.**

14 Q. That's fair. In terms of the minimum

15 qualifications for the Environmental Scientist IV, one of

16 the minimum qualifications is, quote, Possession of

17 either a Master's Degree in an environmentally related

18 scientific discipline." Is that correct?

19 **A. That's correct.**

20 Q. Would you agree that Ann met at least one of

21 the minimum qualifications for ES IV?

22 **A. With possession of the Master's degree? Yes.**

23 Q. Now I'd like you to take a look at what has

24 been previously marked as Will 3.

Page 21

1 Off the record.

2 (Discussion off the record.)

3 BY MS. BREWINGTON:

4 Q. I'll represent to you that this is a document

5 that was submitted by DNREC to the EEOC, the Equal

6 Employment Opportunity Commission, with respect to

7 Ann Breslin's charge of discrimination.

8 I want to ask you to review

9 Ann Breslin's -- actually, first, let's look at Keith's

10 because Keith reported directly to you. Is that correct?

11 **A. Yes.**

12 Q. Let's look at Keith's first. And the pages may

13 be messed up.

14 **A. I think Keith's is at the end.**

15 Q. Take a look at the bottom numbers, 4 to 5.

16 **A. Am I on the right page?**

17 Q. It's like 4 is the last page and it should be

18 the second-to-last page.

19 **A. Okay.**

20 Q. Have you reviewed them?

21 **A. Give me a minute.**

22 Q. Sure. Take your time.

23 **A. Okay.**

24 Q. My first question is: Is this an accurate list

6 (Pages 18 to 21)

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1 of Keith's primary job duties?  
2 **A. It looks like it includes most. It's accurate,**  
3 **yes.**  
4 Q. Now I'll ask you to turn to the front and take  
5 a look at Ann Breslin's specific job duties.  
6 **A. Okay.**  
7 Q. Is it fair to say that the job duties for  
8 Keith Robertson are similar to that of Ann Breslin?  
9 **A. As they're represented here, there are**  
10 **similarities, yes.**  
11 Q. Let me ask you one more question about that.  
12 I'm sorry.  
13 Turning to page 5 at the bottom, you see  
14 where it says, "Mr. Robertson began his employment with  
15 SIRB on" February 1st, 1994, and then it says, "From"  
16 February 1st, 1994, to February 22nd, 2003,  
17 "Mr. Robertson had nine years of experience with SIRB"?  
18 Do you see where it says that?  
19 **A. Yes.**  
20 Q. Was there a time in between February 1st, 1994,  
21 through February 22nd of 2003 when he left DNREC?  
22 **A. I don't remember.**  
23 Q. I believe you just testified to that. I'm not  
24 asking --

Page 23

1 **A. Was there a time? Yes.**  
2 Q. Yes, there was.  
3 **A. Yes.**  
4 Q. Is it fair to say --  
5 **A. Well, remember I testified I don't remember the**  
6 **dates. I believe it's before '03 that he left.**  
7 Q. But between his hire date and his end date, he  
8 left somewhere between there?  
9 **A. Yes.**  
10 Q. Is it fair to say that that is not indicated on  
11 this page?  
12 **A. It says nine years here. It does not mention**  
13 **him leaving.**  
14 Q. Do you know how long he was gone from DNREC?  
15 **A. I can't remember.**  
16 Q. Was it longer than six months?  
17 **A. I really can't remember.**  
18 Q. That's fine.  
19 At any time were you aware of a discrepancy  
20 in pay between Ann Breslin and Keith Robertson?  
21 **A. Between Ann and Keith.**  
22 Q. In their salaries.  
23 **A. Yes.**  
24 Q. Do you recall, and I know this is difficult,

Page 24

1 the first time you became aware that there was some sort  
2 of discrepancy in pay between the two of them?  
3 **A. As a manager I would have to prepare budgets**  
4 **and grants and so I was aware of everyone's salary and**  
5 **the differences between them.**  
6 Q. You became a manager of SIRB in 2000; is that  
7 right? '98? I don't remember.  
8 **A. '98.**  
9 Q. Is it fair to say that you were aware of this  
10 discrepancy as early as '98?  
11 **A. Probably '99, once I got into the grants.**  
12 Q. Did you understand why there was a discrepancy  
13 between the pay?  
14 **A. There's a lot of reasons for discrepancies**  
15 **between pay, so I really didn't question it or try to**  
16 **understand the why.**  
17 Q. In your opinion, should Ann have been making  
18 less money than Keith?  
19 **A. I didn't have the information to make that**  
20 **determination. I really can't say.**  
21 Q. What information would you need?  
22 **A. You would need to know how their starting**  
23 **salaries were derived and how long they had been with the**  
24 **Department, what places they were working for the State**

Page 25

1 **when the raises came into place, you would have to know**  
2 **when they were promoted or hired into their positions,**  
3 **whether either one received an advanced salary.**  
4 Q. Let's go back to Will 3. Take a look at the  
5 hire dates for me. Would you agree that Ann was hired  
6 November 1st, '94? I'm sorry. January 18th, '94.  
7 **A. It's hard to tell on here as you just pointed**  
8 **out. It has seasonal. Has both dates on it here.**  
9 Q. Let me ask you this: Could you tell based on  
10 this form where it says "Hire Date" when Keith Robertson  
11 was hired?  
12 **A. That it was only one date. I'd say yes,**  
13 **February '94.**  
14 Q. Is it fair to say that Keith Robertson's hire  
15 date is after Ann Breslin's?  
16 **A. After Ann Breslin's?**  
17 Q. Yes.  
18 **A. If you go by the November date under Ann's,**  
19 **then he's before her. You see what I mean? If you go by**  
20 **the seasonal date, he's after. If that's what those**  
21 **dates represent.**  
22 Q. That's fair. How about the starting salary,  
23 did both Ann and Keith start at the same salary?  
24 **A. Based on this information, yes.**

7 (Pages 22 to 25)



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1 Q. What was that salary?

2 **A. \$22,998.**

3 Q. As of January 2002, what was Ann Breslin's

4 salary?

5 **A. \$38,390.**

6 Q. And Keith Robertson's?

7 **A. \$43,100, and I don't know -- 25 cents.**

8 Q. That's what I would say.

9 How about as of December 2002, what was

10 Ann's salary?

11 **A. December 2002, \$39,158 and change.**

12 Q. And Keith Robertson's?

13 **A. \$43,962 and change.**

14 Q. Based on your review of this document, is it

15 fair to say that both were hired in '94?

16 **A. Yes.**

17 Q. Is it fair to say that both of them had the

18 same starting salary?

19 **A. Yes. On this sheet.**

20 Q. Now that you have that information, my question

21 earlier that I asked was: Do you have a sense of whether

22 Ann should have been making substantially less money than

23 Keith Robertson.

24 **A. Something else must have come into play here --**

Page 27

1 Q. Like what?

2 **A. -- that creates the discrepancy.**

3 Q. Like what?

4 **A. I'm speculating.**

5 MS. CSIZMADIA: I would object on the

6 grounds that you're asking him to speculate. But go

7 ahead if you feel like you can.

8 THE WITNESS: It depends how the offers and

9 agreements, the hire agreements, were done. Sometimes

10 you start with the minimum salary with the opportunity to

11 ask for an advanced hire salary. I don't know if that

12 becomes retroactive, if that came into play here or not,

13 but it looks like both received the same starting salary.

14 Q. Is it fair to say that based on your review of

15 the top part of that document, that Keith Robertson may

16 have received some form of advanced hire?

17 **A. That could account for the difference, yes.**

18 Q. Is there anything else that may account for

19 that difference?

20 **A. I would say no, not that I can think of.**

21 Q. What is an advanced salary request?

22 **A. An advanced salary request is a request that a**

23 **manager can put forward to HRO when somebody, a**

24 **candidate, who's applied for a job exceeds the minimum**

Page 28

1 **for that position. It means they get more than the**

2 **minimum salary for that position.**

3 Q. In your opinion, have you done advanced salary

4 requests?

5 **A. Yes.**

6 Q. Whose advanced salary requests have you

7 completed?

8 **A. There's been several.**

9 Q. Several. Okay. Approximately how many?

10 **A. Approximately eight to ten, eleven over the**

11 **years.**

12 Q. Did you complete an advanced hire request for

13 Keith Robertson?

14 **A. No. When Keith came back, he was reinstated,**

15 **so I did not have to put in for an advanced hire --**

16 **advanced salary request.**

17 Q. So he didn't receive an increase when he came

18 back?

19 **A. I don't know if he got a bump-up, because at**

20 **the time they bumped up environmental scientists to**

21 **different new pay grades, higher pay grades. And I don't**

22 **know how that related to the date when he came back or**

23 **what he got.**

24 Q. Who makes the determination whether an advanced

Page 29

1 salary request will be granted?

2 **A. It depends on the percentage. There's a**

3 **certain percentage that the -- that stays within our**

4 **department. It goes through HRO, they make a**

5 **recommendation, put it forth to our cabinet secretary who**

6 **decides. If it's higher than a certain percentage, which**

7 **I believe is 85 percent, it goes to the State Personnel**

8 **Office to review and they make the decision.**

9 Q. So as I understand it, it starts with the

10 manager?

11 **A. Yes.**

12 Q. And then it goes to Human Resources?

13 **A. It goes through our division director.**

14 Q. Division director, okay. And then it goes

15 through the Human Resources Office?

16 **A. Yes.**

17 Q. And at that point, then it's sent to the

18 cabinet secretary?

19 **A. Yes -- actually the cabinet secretary has to**

20 **support both. If it's below 85 percent, the cabinet**

21 **secretary can approve it. If it's higher than**

22 **85 percent, then the cabinet secretary has to support the**

23 **decision going forward to HRO or the State Personnel**

24 **Office to make the decision.**

8 (Pages 26 to 29)

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1 Q. How is this decision made?

2 **A. A manager puts forth a review of the**

3 **candidate's training and experience. They relate to the**

4 **minimum qualifications. And you try and sum it up with**

5 **the number of years that the person has either**

6 **demonstrating or exceeding the minimums. Then by the**

7 **time it gets to HRO, they do an assessment of how that**

8 **person's years of experience relates to existing work in**

9 **the Department and that's called a salary comparison and**

10 **they look at the adjusted service date of the DNREC**

11 **employee versus the years of experience that the**

12 **applicant has and they see where it fits in in comparison**

13 **to existing employees and try and make the best decision**

14 **they can.**

15 (Rittberg Deposition Exhibit No. 1 was

16 marked for identification.)

17 **BY MS. BREWINGTON:**

18 Q. I have just put in front of you what's

19 previously been marked Rittberg 1. What is this

20 document?

21 **A. This is an advanced hire request for**

22 **Keith Robertson.**

23 Q. It's from whom?

24 **A. It's from me.**

Page 31

1 Q. It's to?

2 **A. To our Human Resources Office.**

3 Q. It's dated?

4 **A. November 16, 2000.**

5 Q. So the statement you made previously that you

6 didn't do an advanced hire request for Keith, that's not

7 accurate, correct?

8 **A. Well, I put in for one. Actually, I'm not sure**

9 **if this went forward to HRO. If it was in**

10 **Keith Robertson's file, it must have. But it came back**

11 **with the decision that it wasn't needed because it was**

12 **reinstatement.**

13 Q. So you submitted your request, but you're

14 saying it wasn't granted.

15 **A. I would rather phrase it that it wasn't needed.**

16 Q. The second paragraph, it's the last sentence,

17 "Mr. Robertson then worked for DNREC-SIRB for an

18 additional 3.5 years and then left in September of 1999,

19 to spend over a year doing environmental consulting."

20 Does that refresh your recollection in

21 terms of when he left and how long he was gone?

22 **A. Which paragraph were you looking at?**

23 Q. The second paragraph, the last sentence.

24 **A. You want me to read the whole thing? Okay.**

Page 32

1 Q. I think I had a question pending.

2 MS. CSIZMADIA: You asked if that refreshed

3 his recollection to when he left and came back.

4 MS. BREWINGTON: Thanks.

5 **A. Right. He left in September '99.**

6 Q. He was gone for over a year; is that correct?

7 **A. Yes.**

8 Q. Who was involved in drafting this advanced hire

9 request?

10 **A. Myself and I usually involve the staff person.**

11 **So I'd say Keith Robertson.**

12 Q. What role did Keith play in this advanced hire

13 request? Do you understand what I mean?

14 **A. Can you clarify it?**

15 Q. Okay. You said you usually involve the

16 employee.

17 **A. Right.**

18 Q. I guess my question is: How do you involve the

19 employee?

20 **A. By having them outline their experience in past**

21 **jobs and things of that nature.**

22 Q. Is that something that they verbally do with

23 you? Do you meet with them or do you have them write

24 something down?

Page 33

1 **A. Usually it's written and we go back and forth**

2 **with the document.**

3 Q. Is it fair to say that it's a joint group

4 effort in trying to --

5 **A. I would describe it as a joint effort.**

6 Q. What is the benefit do you think of involving

7 the employee in the drafting of the advanced hire

8 request?

9 **A. To make sure that the hiring manager**

10 **understands the type of work that the employee did while**

11 **working elsewhere and making sure that it's an accurate**

12 **depiction of that person's experience.**

13 Q. Would you agree that the best person to do that

14 would be the employee themselves?

15 **A. Yes.**

16 MS. CSIZMADIA: Let's take a break.

17 (A recess was taken.)

18 **BY MS. BREWINGTON:**

19 Q. I have just put in front of you Will 5.

20 **A. Yes.**

21 Q. Take a look at that document for me. After you

22 have had an opportunity to review it, if you could just

23 tell me what it is.

24 **A. It's an advanced hire request for Ann Breslin.**

9 (Pages 30 to 33)

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1 Q. Who is it to and from?

2 **A. It is to Human Resources Office from Paul Will.**

3 Q. And the date of the advanced hire request is

4 what?

5 **A. The date of the request is May 17, 2001, but if**

6 **you can see, my initials are on there, too, as far as I**

7 **signed for Paul.**

8 Q. So you signed on behalf of Paul?

9 **A. Uh-huh.**

10 Q. And the date is May 25th, 2001?

11 **A. That's the date I initialed, yes. I signed for**

12 **Christie, too, it looks like.**

13 Q. Do you know why you signed for them?

14 **A. Both must have been out of the office. I can't**

15 **tell you why.**

16 Q. Do you know whether Paul Will was in support of

17 her request for an advanced hire?

18 **A. I can't remember.**

19 Q. Did you get in trouble for signing off on --

20 **A. No.**

21 Q. How about Christina Wirtz, do you know whether

22 she was in support?

23 **A. I really can't remember. I would generally say**

24 **both of them were if I signed off.**

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1 Q. So is it fair to say that you, Paul, and

2 Christina were involved in this request for an advanced

3 hire for Ann Breslin?

4 **A. I don't remember how much involvement Paul had**

5 **in it, but -- I would say we were all involved, yes.**

6 Q. But you just don't know to what extent?

7 **A. Yes.**

8 Q. So it's fair to say that Paul was aware of this

9 document?

10 **A. Yes.**

11 Q. Seeing as though you signed off on this for

12 Christina and Paul, would it be fair to say that you were

13 in support of her advanced hire request?

14 **A. Based on the situation described here, yes,**

15 **with the leveling-up or the bump-up of the existing**

16 **employees and to a new minimum and how it did not give**

17 **any additional compensation for employees that had quite**

18 **a few years of experience, yes, I was in support of this**

19 **effort.**

20 Q. When you say "the leveling-up," what are you

21 referring to?

22 **A. That's a Human Resources term. That's what**

23 **they call it when there's a hire that comes in at a**

24 **certain salary, a new hire, and existing employees get a**

Page 36

1 **leveling-up.**

2 **In this case maybe I did use the term**

3 **correctly just a few minutes ago. In this situation**

4 **there was a maintenance review that occurred that**

5 **resulted in the existing employees getting the promotion**

6 **to a higher pay grade. It left all of the people, no**

7 **matter how many years of experience they had with the**

8 **Department, at that new minimum pay grade and did not**

9 **take into account or give additional compensation for**

10 **years of experience that existing employees may have had.**

11 Q. You mentioned that all of the employees were at

12 the minimum pay grade.

13 **A. All the employees that were not grandfathered**

14 **into higher-level pay grades, I believe that they have**

15 **them in between 1991 and 1993. There was a maintenance**

16 **review done in those years that resulted in the**

17 **environmental scientists being downgraded.**

18 Q. How about Keith Robertson, was he grandfathered

19 in?

20 **A. No, because he came after the downgrades. So**

21 **he was not grandfathered in.**

22 Q. Was he at the minimum pay grade at this time?

23 **A. At this time any environmental scientist on**

24 **staff would have been bumped up that was not**

Page 37

1 **grandfathered, would have been bumped up to the new pay**

2 **grade.**

3 Q. I guess what my question is: Him being bumped

4 up to the new pay grade, would that put him at the

5 minimum pay grade, that's where he would be at the

6 minimum pay grade?

7 **A. Yes, I believe so.**

8 MS. CSIZMADIA: Could we read that back? I

9 got lost. I'm sorry.

10 (The reporter read back as instructed.)

11 MS. CSIZMADIA: Were we talking about Keith

12 being at the minimum?

13 MS. BREWINGTON: Yes.

14 THE WITNESS: After the bump-up?

15 MS. BREWINGTON: Yes.

16 THE WITNESS: It depends. Let me rephrase

17 that. A number of employees were placed at the new

18 minimum. I don't remember if there were additional

19 compensation for folks that may have been already at that

20 new minimum.

21 BY MS. BREWINGTON:

22 Q. Are you saying that Keith may have been already

23 at the minimum and received an increase?

24 **A. What I'm saying is I don't know where Keith was**

10 (Pages 34 to 37)

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1 in relation -- where his salary was in relation to the  
 2 new salary.  
 3 Q. Your statement previously that all  
 4 environmental scientists would have been moved up to the  
 5 minimum pay grade is not necessarily accurate?  
 6 **A. No, I wouldn't say that was accurate. It would**  
 7 **depend on where they were with respect to the new minimum**  
 8 **pay grade.**  
 9 Q. So some employees may have received an  
 10 additional 5 percent?  
 11 **A. The ones that were grandfathered, I know they**  
 12 **did. Other employees, I don't know. They may have.**  
 13 Q. This maintenance review, is that the  
 14 leveling-up that you talked about previously, or no?  
 15 **A. No. Leveling up was something we were looking**  
 16 **at, I believe, when we brought Keith back to see if we**  
 17 **could assist other environmental scientists such as Ann**  
 18 **in getting a higher salary, and that would basically**  
 19 **bring up your existing staff to that level of salary that**  
 20 **you are recommending for the new person.**  
 21 Q. Is this a term that you created?  
 22 **A. No. It's within the context of the merit**  
 23 **rules.**  
 24 Q. Is it your understanding that the merit rules

Page 39

1 have some form of leveling-up?  
 2 **A. They did at that period of time. I don't know**  
 3 **if they have changed since.**  
 4 Q. That period of time would have been around when  
 5 Keith was rehired?  
 6 **A. Around when Keith was rehired, yes. That was**  
 7 **one option we were looking at to try to increase**  
 8 **salaries. We thought staff was deserving, as well as the**  
 9 **advanced hire package that we submitted which was based**  
 10 **on the time I believe -- I thought there was a promotion**  
 11 **that occurred through the maintenance review and that**  
 12 **this would be an allowable type of thing that could occur**  
 13 **at that period of time.**  
 14 Q. Is it accurate that Ann was the only female  
 15 working as an ES III in SIRB?  
 16 **A. No.**  
 17 Q. Who else?  
 18 **A. Karissa Hendershot.**  
 19 Q. And Karissa was an ES III?  
 20 **A. She was an ES II, I believe, at that merit.**  
 21 Q. We are talking about an ES III. Did I not  
 22 specify that?  
 23 **A. I may have missed it.**  
 24 **Jane Biggs-Sanger was an Environmental**

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1 **Scientist III at the time.**  
 2 Q. And she worked in SIRB?  
 3 **A. Yes.**  
 4 Q. How do you spell her last name?  
 5 **A. B-i-g-g-s. And then she hyphenates it**  
 6 **S-a-n-g-e-r.**  
 7 Q. Did Jane Biggs-Sanger have a Master's degree?  
 8 **A. I don't recall.**  
 9 Q. Do you know when she was hired?  
 10 **A. No, I do not. It was -- she's been with the**  
 11 **program for quite sometime. I would say late '80s, early**  
 12 **'90s.**  
 13 Q. Does Jane Biggs-Sanger currently work here now?  
 14 **A. Yes.**  
 15 Q. Is she still in SIRB?  
 16 **A. Yes.**  
 17 Q. Do you recall a time when Jane Biggs-Sanger  
 18 worked as a seasonal employee?  
 19 **A. Yes.**  
 20 Q. Is that perhaps the same time that Ann Breslin  
 21 worked in SIRB?  
 22 **A. Ann was working in SIRB when Jane was a**  
 23 **seasonal.**  
 24 Q. We were talking about this leveling-up. Do you

Page 41

1 know of other agencies that have leveled up their  
 2 employees?  
 3 **A. No, I do not. I may have in the past and**  
 4 **forgotten.**  
 5 Q. As of today, you can't recall.  
 6 **A. As of today, I can't recall.**  
 7 Q. How about DelDOT, does that refresh your  
 8 recollection as to whether they leveled up salaries?  
 9 **A. I just can't recall. It sounds familiar.**  
 10 Q. Is there anything that you can recall about  
 11 DelDOT and leveling up salaries?  
 12 **A. Nothing specific.**  
 13 Q. Anything generally?  
 14 **A. No. As I said, it's familiar, but I can't**  
 15 **recall.**  
 16 Q. I'm not sure if I asked you this before, but  
 17 I'm going to ask it again. Did you support Ann Breslin's  
 18 request for an increase in salary comparable to  
 19 Keith Robertson?  
 20 **A. Comparable to Keith Robertson? Yes.**  
 21 Q. Why is that?  
 22 **A. Well, I thought all of the environmental**  
 23 **scientists that did not get a bump-up or that did not get**  
 24 **additional compensation for their years of experience**

11 (Pages 38 to 41)

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1 when the bump-up occurred should have gotten some  
2 additional compensation for their years of experience  
3 within the Department, meaning that somebody that got  
4 hired as a new hire that month, if they were coming in  
5 without exceeding the minimum shouldn't be compensated  
6 the same as somebody who was already working for the  
7 Department and had years of experience on that job.

8 Q. In Ann Breslin's case, was she essentially  
9 being paid at an entry-level rate?

10 A. If somebody would have started as an ES III,  
11 not only Ann but all the other ES IIIs that were placed  
12 at that minimum salary were basically working at an  
13 entry-level rate.

14 Q. Can you say that again?

15 A. I said all of the ES IIIs that got moved up to  
16 that new minimum salary were basically working at the new  
17 entry-level rate. Entry level for that Environmental  
18 Scientist III level, the person would still have to meet  
19 the minimums.

20 Q. Do you remember who the other ES IIIs were?

21 A. Other ES IIIs. Within the branch at what  
22 period of time?

23 Q. We're talking about I want to say -- I think  
24 all of our conversation and dialog has been with respect

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1 to this leveling-up and we discussed that it was around  
2 the time that Keith Robertson came back.  
3 A. I would phrase that we have also discussed the  
4 maintenance review bump-up, as well.

5 Q. Okay. I think the last -- I think I went back  
6 to the leveling-up when I asked you if there were any  
7 others that did the leveling-up.

8 A. Okay.

9 Q. I want to talk about that. The time frame  
10 would be around 2000.

11 MS. CSIZMADIA: Could you clarify because  
12 there was -- are you saying there was a leveling-up?

13 MS. BREWINGTON: No, I'm not saying there  
14 was a leveling-up. I think, and correct me if I'm wrong,  
15 there were efforts to level up employees.

16 A. There was at least discussion of it.

17 Q. And the time frame, as I understood it, was  
18 around 2000 when Keith came back.

19 A. I can't remember the time frame. It was I  
20 would say somewhere between 1998 and 2002.

21 Q. That's fair. My question was: Who were the  
22 Environmental Scientist IIIs in SIRB at that time?

23 A. We had Larry Jones, Qazi Salahuddin. Jane I  
24 already mentioned.

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1 Q. She was seasonal, correct?

2 A. I don't know the dates that she was seasonal  
3 and then got hired back.

4 Q. But we discussed earlier she was seasonal when  
5 Ann Breslin worked there?

6 A. When Ann Breslin worked for SIRB for over seven  
7 years and Jane was seasonal for about two years of that,  
8 I believe.

9 Q. All right. Who else?

10 A. At the III level?

11 Q. Yes.

12 A. There were some others. I'm not sure if they  
13 made it to the III level by then.

14 Q. Keith was one of them, right?

15 A. Keith was one, yes.

16 Q. Can you recall anybody else?

17 A. Environmental Scientist III level in SIRB. Not  
18 that I can remember. Paul Will.

19 Q. He was an ES III during this time?

20 A. He was an ES III between '98 and 2002. At some  
21 point in there. I don't know the exact date he was  
22 promoted.

23 Q. Going back to this limited maintenance review,  
24 that was in May of 2000.

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1 A. Okay.

2 Q. That's based on this document here, Will 5,  
3 May 22nd, 2000, the result of the limited maintenance  
4 review. Do you see where it says that?

5 A. Yes.

6 Q. Now, let me ask you this: There are certain  
7 people in SIRB, ES IIIs, that went up to the minimum pay  
8 grade; is that correct?

9 A. Yes.

10 Q. And then there are other people in SIRB that  
11 are ES IIIs that received a 5 percent increase; is that  
12 also correct?

13 A. Yes.

14 Q. That's all based on the limited maintenance  
15 review?

16 A. Yes.

17 Q. Do you know, sitting right here, which  
18 employees received 5 percent and which employees were  
19 bumped up to the minimum pay grade?

20 A. I can say for sure that Larry Jones and  
21 Jane Biggs received the 5 percent. And Keith, Ann, and  
22 I'm not sure who else was here at the time, Qazi, would  
23 have been brought up to the new minimum. Like I said, I  
24 think there was some other criteria. It depended on what

12 (Pages 42 to 45)



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1 **they were making at the time.**

2 Q. So for Larry Jones and Jane Biggs, they were

3 given 5 percent increases, correct?

4 **A. Yes. There was another gentleman, too,**

5 **Rob Allen, that may have worked in the branch, too, for**

6 **that period of time.**

7 Q. He was an ES III?

8 **A. Yes, Rob was an ES III.**

9 Q. Do you know whether he received a 5 percent

10 increase or if he was brought up to the minimum?

11 **A. I don't want to guess.**

12 Q. I don't want you to guess. I just want you to

13 tell me who you're sure of.

14 Is it Larry and Jane that you're sure that

15 they received a 5 percent --

16 **A. Yes.**

17 Q. You also mentioned Qazi?

18 **A. Qazi Salahuddin.**

19 Q. Close enough.

20 Keith Robertson, Paul Will, Ann Breslin,

21 and Rob Allen, all ES IIIs between 1998 and 2002; is that

22 correct?

23 **A. I'm not sure when Rob left.**

24 Q. That's fine.

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1 **A. I don't want to guess. I'll just say I don't**

2 **know if he got 5 percent.**

3 Q. We will go one by one. Qazi, do you know

4 whether he received the 5 percent or was bumped up to the

5 minimum?

6 **A. With Qazi, he got an advanced hire when he came**

7 **in. So I'm not sure if that had an effect.**

8 Q. If that had an effect, would that mean that he

9 would have been --

10 **A. Already above that minimum? Yes.**

11 Q. And then would have received a 5 percent --

12 **A. I don't know if the rules allow that to happen.**

13 **I can't remember that. I know the people that were**

14 **pre-'93 definitely got 5 percent. I don't know if people**

15 **that came in after and were above that minimum received**

16 **the 5 percent, as well.**

17 Q. How about Keith Robertson, you don't know

18 either way?

19 **A. No, I don't.**

20 Q. How about Paul Will, you don't know either way?

21 **A. No.**

22 Q. Ann Breslin?

23 **A. Yes.**

24 Q. What do you know?

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1 **A. Ann got to the new minimum.**

2 Q. The new minimum.

3 **A. Yes.**

4 Q. And Rob Allen?

5 **A. Rob I'm not sure. Don't know.**

6 Q. Fair enough.

7 I'd like you to take a look at Will 6.

8 **A. (Complied.)**

9 Q. Have you had an opportunity to review it? I'd

10 like you to read for me the parts of this e-mail that you

11 wrote.

12 **A. Okay. "I modified the intro and justification**

13 **section to be consistent with my last email regarding**

14 **requesting an advanced hire based on the promotion**

15 **(increase in pay grade) you received as part of last**

16 **year's maintenance review. I will forward you that last**

17 **email again where I referenced all the applicable merit**

18 **rules. You did a very good job describing your**

19 **experience."**

20 Q. Did you send this message in reference to the

21 advanced hire request that we just talked about?

22 **A. Yes.**

23 Q. Who did you send it to?

24 **A. It's a little hard to track here.**

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1 Q. It is a little hard to track. I don't believe

2 it specifically indicates who you sent it to. I just

3 thought you might know.

4 **A. I'm trying to figure out who forwarded it.**

5 Q. Can I ask you a question?

6 **A. Sure.**

7 Q. If you look at the last sentence of your letter

8 or e-mail, it says, "You did a very good job describing

9 your experience."

10 **A. Yes.**

11 Q. Is it fair to say that you at least sent it to

12 Ann?

13 **A. Yes.**

14 Q. There may have been others, but we know based

15 on this last sentence that you probably sent it to her.

16 **A. Yes.**

17 Q. How about the e-mail above that?

18 **A. It's kind of written twice. There's two here.**

19 **The first page or the second page?**

20 Q. I'm still on the first page. I want to ask you

21 about that first full paragraph, the one beginning with

22 "Alex." Go ahead and read it for me. You don't have to

23 read it out loud if you don't want to.

24 **A. (Complied.)**

13 (Pages 46 to 49)

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1 **Okay.**

2 Q. Did you have conversations with Ann regarding  
3 her salary?

4 **A. Yes.**

5 Q. Is it a fair statement that you had these  
6 conversations over the past year?

7 **A. Yes.**

8 Q. Did you want to make an attempt to work on this  
9 for her?

10 **A. Yes.**

11 Q. Did you manage to get every advanced hire  
12 approved to a point?

13 **A. Most of the advanced hires, if not all. I  
14 don't remember every one, but I had gotten a lot of them  
15 approved that I submitted.**

16 Q. Why do you think that is?

17 **A. When you write an advanced hire justification,  
18 you really have to describe the person's experience and  
19 you also have to relate it to the minimum criteria that's  
20 listed in the job specifications. Some people can write  
21 that up better than others.**

22 Q. How about that next sentence, "I feel weird  
23 doing this but it may be worth a try since I am the only  
24 ES III in sirb STILL making entry-level"?

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1 **A. Okay.**

2 Q. We talked about several different people  
3 between 1998 and 2002.

4 **A. Uh-huh.**

5 Q. Based on your recollection and after reviewing  
6 this e-mail, is it possible that Ann was the only  
7 environmental scientist in SIRB still making entry-level?

8 **A. It's possible, yes. As I stated before, that  
9 if some of the other folks were making higher than that  
10 new minimum salary, they could have gotten a bump-up, and  
11 I don't remember what the rule is for that.**

12 Q. How did this all come about, this May 17th  
13 memo? Walk me through, if you can remember, how it  
14 happened. Do you know what I'm asking?

15 **A. I know what you're asking. And I think it came  
16 about out of a willingness for the managers in SIRB to  
17 work with our employees to try and get them additional  
18 compensation following the maintenance review.**

19 Q. So it was a joint effort between you and  
20 Ann Breslin and Christina Wirtz and Paul Will?

21 **A. Yes. At the time we had lost quite a bit of  
22 staff from the SIRB branch to not just outside jobs but  
23 other government jobs in different agencies, which is the  
24 EPA, Army Corps of Engineers, and others, and we really**

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1 **didn't want to lose any more of our experienced people.**

2 Q. Would you say there was like a retention issue?

3 **A. Yes, there was a retention issue.**

4 Q. Do you know whether the merit rules provide any  
5 policy with respect to retention and salaries?

6 **A. Yes. It takes two years to document. That  
7 policy is called a Selective Market Policy where  
8 additional-hire salaries or market-based salaries are put  
9 in place for specific job classifications. It takes two  
10 years, at least two years, of data, from what I have been  
11 told, to establish a selective-market salary and you have  
12 to demonstrate your turn-over rate, as well as the  
13 difficulty in hiring new people to fill the positions.**

14 Q. How does that selective-market salary research  
15 thing go along with this limited maintenance review? Do  
16 you use the results of this -- why are you smiling?

17 **A. I wish I knew. I don't know.**

18 Q. Okay.

19 **A. It's all done by our State Personnel Office.  
20 And how the two relate -- they're both there within our  
21 compensation system, but I don't know how they really  
22 relate to each other.**

23 Q. Back to the May 17th, 2001, memo. It was in an  
24 effort to assist Ann with her salary; is that correct?

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1 **A. Not just Ann, but there were other ESs both --  
2 not just at the ES III levels but ES II levels, and not  
3 just in SIRB but within other programs that were in the  
4 same situation that were now at the new minimum salary  
5 which some took it as any raise is a good raise. And  
6 some were added. This other issue of if somebody new  
7 comes in, they were basically at an entry-level salary.**

8 Q. But Ann may have been the only person in SIRB  
9 as an ES III affected by that?

10 **A. She may have, yes.**

11 Q. I'm going to ask you questions about the next  
12 document. If you don't know much, that's okay, just say  
13 I don't know.

14 It's been previously marked as Will 8.

15 Have you ever seen this document before?

16 **A. Yes, I have seen it.**

17 Q. What is it?

18 **A. It's a Department policy.**

19 Q. What is the subject?

20 **A. The subject is "Advanced Salary."**

21 Q. By "Department" you mean DNREC?

22 **A. Yes.**

23 Q. It was issued on October 23rd, 2001, and then  
24 revised on November 13, 2001; is that correct?

14 (Pages 50 to 53)

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1 **A. Yes.**  
2 Q. I want to ask you about this first section  
3 here. You have seen it before, right?  
4 **A. I have seen it, yes.**  
5 Q. When have you seen it?  
6 **A. In reviewing Department policies in the course**  
7 **of writing advanced hires.**  
8 Q. This policy was issued October 23rd, 2001.  
9 **A. Uh-huh.**  
10 Q. Do you know whether or not there was a policy  
11 similar to this prior to this date?  
12 **A. No, I don't know that.**  
13 Q. The first section there, it's in bold, it  
14 begins with "I. Subject to available funding, advanced  
15 salaries should be primarily used for," and then it says,  
16 "A. Retention."  
17 **A. Uh-huh.**  
18 Q. Then it says, "NOTE: Excluded would be career  
19 ladder promotions, and promotions as a result of a  
20 maintenance review."  
21 Tell me what, if you know, it means by  
22 "Excluded would be career ladder promotions."  
23 **A. That would be an internal promotion, and the**  
24 **candidate that would receive that internal promotion**

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1 **would not be allowed to put in for an advanced salary.**  
2 Q. How about the section labeled "C. Internal  
3 Equity"? Have you had an opportunity to review that  
4 already?  
5 **A. Give me a minute.**  
6 Q. Okay.  
7 **A. Okay.**  
8 Q. What is your understanding of internal equity?  
9 **A. Internal equity, to make comparable**  
10 **compensation for people that work for our department that**  
11 **have a similar experience level.**  
12 Q. Is the Environmental Scientist III position a  
13 technical position?  
14 **A. Yes.**  
15 Q. Do you see the last bullet there? It says,  
16 "the department will selectively use a Peer Review  
17 process to scrutinize education, experience and training  
18 to support a request."  
19 **A. Yes.**  
20 Q. Do you know whether that was ever done in  
21 Ann Breslin's case?  
22 **A. I don't know.**  
23 Q. Do you have any idea who would be a part of a  
24 peer review committee?

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1 **A. For advanced hires? I don't know.**  
2 Q. Did you have discussions with Ann regarding her  
3 salary?  
4 **A. Yes.**  
5 Q. Can you recall what was said during those  
6 conversations, generally?  
7 **A. Generally?**  
8 Q. Generally.  
9 **A. Very generally.**  
10 Q. Okay. Generally. Very generally.  
11 **A. From what I remember, Ann had concerns that she**  
12 **was not being fairly compensated and -- could I use what**  
13 **was in the e-mail? That she felt that she was the only**  
14 **Environmental Scientist III making the new, quote,**  
15 **entry-level salary and was asking if we could do anything**  
16 **as managers to assist her in getting additional**  
17 **compensation.**  
18 Q. Do you know whether she ever received an  
19 increase in salary comparable to Keith Robertson?  
20 **A. I don't know. I don't think she did.**  
21 Q. I have just put in front of you what has  
22 previously been marked as Will 9. Go ahead and take a  
23 look at it and let me know when you're finished.  
24 **A. (Complied.)**

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1 **Okay.**  
2 Q. I'm going to switch things up and show you a  
3 different one. We will go back to that.  
4 (Rittberg Deposition Exhibit No. 2 was  
5 marked for identification.)  
6 BY MS. BREWINGTON:  
7 Q. Take a look at what has been marked as  
8 Rittberg 2, but keep that one aside.  
9 **A. (Complied.)**  
10 Q. Have you read it?  
11 **A. Yes.**  
12 Q. I'd like to focus on the top portion of this  
13 document. It's an e-mail from Ann Breslin to Paul Will,  
14 cc'g yourself.  
15 **A. Okay.**  
16 Q. It's regarding maintenance review policy. The  
17 date of it is June 1st, 2001, 8:56 a.m. Go ahead and  
18 read for me the first -- actually read this first e-mail  
19 message.  
20 **A. "Hello All - Well I was informed that I was**  
21 **officially shot down for more than entry level.**  
22 **Before I go the route of grieving the whole**  
23 **thing I would like to look at another way of**  
24 **dealing with it. The background for Alex and**

15 (Pages 54 to 57)

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1 Christina is the following (comparing Keith and  
2 I since we are very similar): I was hired on  
3 January 15, 2001 - Keith was hired 2 weeks  
4 later. We both have MS Degrees - and both went  
5 for promotion to ES IIIs at the same time.  
6 Jamie did hers for Keith through career ladder.  
7 Karl did not want to be bothered so he posted a  
8 position - reviewed applicants and hired me into  
9 it. Keith and I both have several years of work  
10 experience - his with South Carolina Coastal  
11 Geology - mine was with Botany and Wetlands.  
12 When both of the advanced hires were filed,  
13 according to Karl, Personnel did not feel like  
14 my experience was applicable to my job - but  
15 Keith's was considered applicable. I thought  
16 that was weird since both sets of experience  
17 were out of state - and we were both ESs - not  
18 hydros or wetlands scientists - yet we could use  
19 both in our work experience as project managers.  
20 We have been treated differently from the start  
21 for some reason - Jamie told me once that one of  
22 the big reasons I was shot down was that Karl  
23 made Personnel mad by some comments he made when  
24 they questioned my advanced hire - but that is

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1 totally hearsay. I would like Personnel to  
2 explain their reasoning in late 1996 to me - if  
3 they just bring me up to the level of Keith -  
4 which I think is fair - I would be happy with  
5 that."  
6 Q. Do you remember getting this e-mail?  
7 A. Before today I do not remember getting it. I  
8 probably did. It's addressed to me. But I probably read  
9 it in 2001.  
10 Q. And it's what, 2006?  
11 Did you support Ann Breslin's request for  
12 equal pay?  
13 A. I supported Ann getting additional  
14 compensation, as well as the other environmental  
15 scientists that were now working at the new minimum  
16 salary. And yes, I supported Ann getting additional pay.  
17 Q. Now if we could go back to the one I had you  
18 read earlier, Will 9.  
19 A. Okay.  
20 Q. What is this document?  
21 A. An e-mail.  
22 Q. Can you tell me anything else about it?  
23 A. An e-mail from Ann.  
24 Q. I'll help you out. It's an e-mail from Ann to

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1 Paul Will, Christina Wirtz, and yourself. It's dated  
2 Wednesday, September 11th, 2002. Is that correct?  
3 A. Yes.  
4 Q. The subject is "Personal Issues -  
5 Confidential." The importance, high; sensitivity,  
6 confidential. The second paragraph indicates: "I want  
7 to thank the three of you for supporting me over the past  
8 few years, either by drafting memos on my behalf or by  
9 verbally supporting me in my efforts."  
10 Would you agree with that?  
11 A. Yes.  
12 Q. As of September 11th, 2002, is it fair to say  
13 that, based on this e-mail, Ann had decided to seek  
14 counsel to deal with the pay inequities?  
15 A. Yes.  
16 Q. Do you know whether she, in fact, filed a  
17 grievance regarding this?  
18 A. Yes. She did.  
19 Q. Do you know that she filed a Charge of  
20 Discrimination with the Department of Labor?  
21 A. Yes. I read the complaint.  
22 MS. CSIZMADIA: Objection, just because I  
23 think his answer was not the same as yours, but I don't  
24 think he recognizes the difference.

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1 Q. My question was were you aware that she filed a  
2 complaint with the Department of Labor. I wasn't asking  
3 about the complaint that you reviewed. I was asking you  
4 if you knew that she filed a claim with the Department of  
5 Labor.  
6 A. I don't know the difference. I don't know.  
7 MS. BREWINGTON: Rittberg 3.  
8 (Rittberg Deposition Exhibit No. 3 was  
9 marked for identification.)  
10 BY MS. BREWINGTON:  
11 Q. Is this Ann Breslin's resignation letter?  
12 A. Yes.  
13 Q. It's dated February 11, 2003?  
14 A. Yes.  
15 Q. It's addressed to yourself?  
16 A. Yes.  
17 Q. Go ahead and read it for me.  
18 A. "Dear Alex, please consider this as  
19 notification of my resignation from my position  
20 as an Environmental Scientist III, effective  
21 February 24, 2003.  
22 "Although I have enjoyed working with you, I  
23 have decided to pursue employment with the  
24 United States Environmental Protection Agency

16 (Pages 58 to 61)

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1 **Region III in Philadelphia. As you are well**  
 2 **aware, the compensation provided by DNREC has**  
 3 **not managed in any way to keep pace with my**  
 4 **growing responsibilities within DNREC. It is a**  
 5 **fact that after 6 years of full performance as**  
 6 **an Environmental Scientist III, I continue to be**  
 7 **compensated in the same manner as a new**  
 8 **employee. In addition, my salary remains far**  
 9 **lower than my counterparts within SIRB. This**  
 10 **fact has become completely unacceptable to me**  
 11 **and I must move into an employment situation in**  
 12 **which I will be fairly and equitably**  
 13 **compensated.**

14 **"Thank you for all of your help in this and**  
 15 **other matters and for your many personal**  
 16 **kindnesses."**

17 Q. "Sincerely, Ann Breslin"?

18 A. "Sincerely, Ann Breslin."

19 Q. After six years of full performance as an  
 20 ES III, was Ann Breslin compensated at the same manner as  
 21 a new employee?

22 A. Yes. Due to that maintenance review.

23 Q. Is it also true that her salary remained lower  
 24 than her counterparts within SIRB? Counterparts meaning

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1 other ES IIIs.

2 A. I don't remember the other ES III salary, but  
 3 based on her e-mail, it sounded like it did.

4 Q. How did you feel about her resignation?

5 A. Another experienced person, highly skilled  
 6 person leaving our branch. I was sorry to see her leave.

7 Q. Does that go back to that retention problem?

8 A. It does, yes. Ann could manage a project and  
 9 she managed projects very well.

10 MS. BREWINGTON: I don't think I have  
 11 anything further.

12 MS. CSIZMADIA: I have got a couple  
 13 questions.

14 BY MS. CSIZMADIA:

15 Q. Drawing your attention to Will 8, it's the  
 16 advanced salary policy. The second page, section C, in  
 17 that first bullet it talks about critical  
 18 reclassification request, does it not?

19 A. Yes.

20 Q. Does the third bullet also refer to requests?

21 A. "The department will selectively use a Peer  
 22 Review process to scrutinize education, experience and  
 23 training to support a request." Yes.

24 Q. Does it appear to be referring to a critical

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1 classification request?

2 A. I don't know.

3 Q. Do you know if there's a difference between a  
 4 critical reclassification request and a maintenance  
 5 review?

6 A. Do I know there's a difference between the two.  
 7 I believe there is a difference in the fact that a  
 8 critical reclass request comes from the Department and a  
 9 maintenance review is initiated by SPO or HR.

10 Q. When you talk about the rules, what are you  
 11 talking about, what rules?

12 A. The rules? Merit rules or state policies. Is  
 13 that what you're referring to?

14 Q. The merit rules. Is it your understanding the  
 15 Department has to follow the merit rules?

16 A. Yes.

17 Q. Drawing your attention to Will No. 2, Ms. --  
 18 let's go to page 5 of 6. Ms. Brewington asked you --

19 A. Will No. 2. I was on Rittberg 2.

20 Q. That's the ES series. Page 5. Ms. Brewington  
 21 asked you whether Ms. Breslin met one of the  
 22 qualifications for an ES IV relating to the Master's  
 23 degree, correct?

24 A. Yes.

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1 Q. How many of the minimum qualifications do you  
 2 have to meet before you're qualified for a position?

3 A. All of them.

4 Q. The job duties that are set out in this  
 5 environmental science series, when you were talking about  
 6 the environmental scientists in Air and in UST and in  
 7 Water, do you fulfill the same job duties that are set  
 8 out in this series description?

9 A. The job duties are written generally enough  
 10 that they should apply to the type of work that the  
 11 people do in all of the branches.

12 Q. And the limited maintenance review, is that a  
 13 maintenance review of all the persons employed in the  
 14 environmental science series in DNREC?

15 A. Yes.

16 Q. When you said that you lost lots of talented  
 17 people, experienced people like Ann, because of the  
 18 maintenance review, were some of those people females?

19 A. Due specifically to the maintenance review or  
 20 just because of the state compensation system?

21 Q. Due to the state compensation system, did you  
 22 lose people that were just females or just males or both?

23 A. We lost both.

24 Q. When you said you supported people's efforts to

17 (Pages 62 to 65)



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1 get a salary higher than the entry level, did you support  
2 the efforts of males to get in the environmental  
3 scientist series III who had been here longer to get more  
4 than the entry level?

5 **A. I supported all of the environmental scientists**  
6 **regardless of gender, race. All environmental**  
7 **scientists, they get additional compensation.**

8 Q. And the environmental scientists also that were  
9 in SIRB?

10 **A. Yes.**

11 Q. Did you think that Ann's pay was lower because  
12 she was a female?

13 **A. No.**

14 MS. CSIZMADIA: I don't have any more  
15 questions right now.

16 MS. BREWINGTON: Can we take a break?

17 MS. CSIZMADIA: Sure.

18 (A recess was taken.)

19 MS. BREWINGTON: I don't have anything  
20 further.

21 (Deposition concluded at 3:10 p.m.)

22 - - - - -

23

24

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REPLACE THIS PAGE

WITH THE ERRATA SHEET

AFTER IT HAS BEEN

COMPLETED AND SIGNED

BY THE DEPONENT

Page 67

# TESTIMONY

3 DEPONENT: E. ALEXANDER RITTBERG PAGE

5 BY MS. BREWINGTON..... 2

6 BY MS. CSIZMADIA..... 63

# EXHIBITS

10 RITTBERG DEPOSITION EXHIBIT NO. MARKED

12 1 - A memorandum dated November 16, 2000..... 30

13 2 - Two pages of e-mails..... 57

14 3 - A letter dated February 11, 2003,  
to E. Alex Rittberg from Ann L. Breslin..... 61

16 ERRATA SHEET/DEPONENT'S SIGNATURE PAGE 68

18 CERTIFICATE OF REPORTER PAGE 69

19

20

21

22

23

24

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# CERTIFICATE OF REPORTER

STATE OF DELAWARE)

NEW CASTLE COUNTY)

I, Kimberly A. Hurley, Registered Professional Reporter and Notary Public, do hereby certify that there came before me on the 23rd day of June, 2006, the deponent herein, E. ALEXANDER RITTBERG, who was duly sworn by me and thereafter examined by counsel for the respective parties; that the questions asked of said deponent and the answers given were taken down by me in Stenotype notes and thereafter transcribed by use of computer-aided transcription and computer printer under my direction.

I further certify that the foregoing is a true and correct transcript of the testimony given at said examination of said witness.

I further certify that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

Kimberly A. Hurley  
Certification No. 126-RPR  
(Expires January 31, 2008)

DATED:

18 (Pages 66 to 69)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ANN L. BRESLIN, )  
)  
Plaintiff, )  
)  
v. ) C.A. No. 05-290  
)  
STATE OF DELAWARE, )  
DEPARTMENT OF NATURAL )  
RESOURCES & ENVIRONMENTAL )  
CONTROL, )  
)  
Defendant. )

Deposition of KARL F. KALBACHER taken  
pursuant to notice at the law offices of Margolis  
Edelstein, 1509 Gilpin Avenue, Wilmington, Delaware,  
beginning at 1:00 p.m., on Wednesday, June 28, 2006,  
before Kimberly A. Hurley, Registered Merit Reporter and  
Notary Public.

APPEARANCES:

LORI BREWINGTON, ESQUIRE

MARGOLIS EDELSTEIN

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Wilmington, Delaware 19806

for the Plaintiff

VALERIE S. CSIZMADIA, DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Carvel State Office Building

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Wilmington, Delaware 19801

for the Defendant

ALSO PRESENT:

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WILCOX & FETZER

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Page 2

1 KARL F. KALBACHER,  
 2 the witness herein, having first been  
 3 duly sworn on oath, was examined and  
 4 testified as follows:  
 5 BY MS. BREWINGTON:  
 6 Q. Good afternoon.  
 7 A. Good afternoon.  
 8 Q. My name is Lori Brewington, and I represent  
 9 Ann Breslin in her gender discrimination action against  
 10 DNREC.  
 11 Have you ever testified in a deposition  
 12 before?  
 13 A. Yes.  
 14 Q. So I'm sure you know that I'm going to ask you  
 15 a series of questions, and I'll make every effort to ask  
 16 them one at a time. If at any time you do not understand  
 17 the question that I ask, if you could just let me know  
 18 and I'll go ahead and rephrase or repeat the question.  
 19 If at any time you need to take a break,  
 20 just let me know. There is water. I don't imagine we're  
 21 going to be too long today, but you never know.  
 22 At times DNREC's attorney may object to  
 23 some of the questions that I ask, and that's entirely  
 24 proper. The only thing that I ask is that you go ahead

Page 3

1 and answer the question unless she specifically advises  
 2 you not to answer the questions.  
 3 Do you understand the instructions?  
 4 A. Yes.  
 5 Q. What did you do in preparation for your  
 6 deposition testimony today?  
 7 A. I met with the DNREC attorney for about half an  
 8 hour just to understand the lawsuit and I was provided  
 9 with some materials, I guess the complaint in the United  
 10 States District Court which I reviewed a little bit, a  
 11 request for advanced hire and advanced promotion for  
 12 competitive hire, and then a supplemental information  
 13 request on behalf of Ann Breslin for advanced hire, and  
 14 then an employee performance plan appraisal from a period  
 15 of January 1, 1995, to December 31, 1995, and then a  
 16 response to the complaint by the State.  
 17 Q. Is that the answer? Is that what the second  
 18 page says?  
 19 A. Yes, I believe it's the answer. Defendant's  
 20 answer. That's basically it.  
 21 Q. So those are the documents that you reviewed in  
 22 connection with the deposition testimony today?  
 23 A. Yes.  
 24 Q. I'd like to start off by talking about you and

Page 4

1 your work experience. Where do you currently work?  
 2 A. I work for New Castle County, Delaware,  
 3 Government.  
 4 Q. What is your job title?  
 5 A. I'm the Director of Redevelopment.  
 6 Q. How long have you been Director of  
 7 Redevelopment?  
 8 A. I have been director since September of 2005.  
 9 Q. What did you do prior to being Director of  
 10 Redevelopment?  
 11 A. I worked for KCI Technologies, which is an  
 12 environmental consulting firm, for about a year.  
 13 Q. Prior to that?  
 14 A. I was the Environmental Program Administrator  
 15 for the Maryland Department of the Environment,  
 16 Environmental Restoration and Redevelopment Program.  
 17 Q. How long were you with that?  
 18 A. Approximately five years.  
 19 Q. Prior to that?  
 20 A. I was an Environmental Program Manager I with  
 21 DNREC Site Investigation & Restoration Branch.  
 22 Q. When did you begin your employment with DNREC?  
 23 A. January 1, 1989.  
 24 Q. In January of 1989 were you a Program

Page 5

1 Manager I?  
 2 A. No, I was not.  
 3 Q. Take me through your employment at DNREC.  
 4 A. I started as a Hydrologist I on January 1,  
 5 1989. I was promoted, I believe, to -- competitively  
 6 hired to a Hydrologist II approximately nine months later  
 7 as a well head protection hydrogeologist. I then was  
 8 competitively hired as a Hydrologist level III -- I  
 9 believe that was another six or seven months later -- as  
 10 a Superfund project manager/hydrogeologist. And I think  
 11 about nine months after that I was hired competitively as  
 12 an Environmental Program Manager I in Superfund --  
 13 formerly Superfund, now Site Investigation & Restoration  
 14 Branch.  
 15 Q. Ann Breslin worked at DNREC between 1994 and  
 16 2003. My question is: During that time did you serve as  
 17 a program manager?  
 18 A. During a portion of that time I served as an  
 19 Environmental Program Manager I.  
 20 Q. Not during that whole time because you weren't  
 21 there.  
 22 A. Correct.  
 23 Q. When did you leave DNREC?  
 24 A. I believe I left DNREC in August 1999. August

2 (Pages 2 to 5)

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1 or September. I have to check my records.  
2 Q. Did Ann Breslin report to you from 1994 to  
3 1999?  
4 A. Yes. I believe that's correct.  
5 Q. Tell me what some of your roles and  
6 responsibilities were as Program Manager I.  
7 A. My responsibilities were to direct, manage  
8 technical and administrative staff assigned to my  
9 section; to review and approve work products, reports,  
10 letters; to perform performance evaluations of employees,  
11 and promotional requests; to serve as part of the  
12 management team for the direction of the Superfund  
13 branch; to do grants management and program development.  
14 I think that generally captures -- of course, public  
15 contact with a variety of different groups, whether they  
16 be interested third parties or persons who we were  
17 conducting environmental studies of their property.  
18 Q. How many employees reported directly to you?  
19 A. That would vary over time, but on average I  
20 would suggest about seven or so.  
21 Q. Would they all be ES IIIs or is it any role in  
22 terms of any job title?  
23 A. The jobs were varied. There were different  
24 levels of environmental scientists, as well as

Page 7

1 hydrogeologists. And, of course, there were  
2 administrative assistants, secretaries. There might have  
3 been a planner at one point or another.  
4 Q. When did you graduate from high school?  
5 A. 1979.  
6 Q. Did you go to college?  
7 A. Yes.  
8 Q. Where did you attend college?  
9 A. Tulane University.  
10 Q. What did you receive?  
11 A. Bachelor of Science, 1983.  
12 Q. Do you have any other education?  
13 A. Master's of Science 1986, Stephen F. Austin  
14 State University, and I also took, I think, over 30 hours  
15 of education, secondary education classes, at various  
16 colleges.  
17 Q. Did you enjoy your job at DNREC?  
18 A. Yes.  
19 Q. Why did you leave?  
20 A. Because of the promotional opportunity.  
21 Q. When Ann Breslin was hired at DNREC, did she  
22 report to you at that time? And that would be in 1994.  
23 A. I believe that I hired Ann Breslin from the  
24 period of 1994 to 1999, depending upon which position she

Page 8

1 was seeking.  
2 Q. So you may have hired her in 1994 and then also  
3 hired her again in '96 when she became an ES III?  
4 A. I believe there were three hires. One was for  
5 a Seasonal Environmental Scientist, second was for an  
6 Environmental Scientist II, and thirdly was for an  
7 Environmental Scientist III. Hiring in the context of  
8 the position was posted for competitively and she was  
9 retained, chosen.  
10 Q. Is it fair to say that since you hired her for  
11 all those three positions, that you felt that she was the  
12 most qualified?  
13 A. Yes.  
14 Q. Let's talk about the decision to post the  
15 ES III position. That was in '96; is that correct?  
16 A. I presume you to be correct.  
17 Q. Did you make the decision to post the position?  
18 A. I don't think it would be fair to characterize  
19 that as being done in isolation. I worked for a Program  
20 Manager II and for a director, and, certainly, if they  
21 had any -- they should have had or could have had direct  
22 interest. Moreover, they could have had direct say over  
23 whether that position was posted as a I, II, III, IV.  
24 Q. Are you saying that you don't know whether they

Page 9

1 had a say?  
2 A. I really don't know if they had a say. My  
3 general approach to management has never been to work in  
4 isolation, and I don't think my boss would want me to do  
5 that.  
6 Q. Do you think as you sit here today you don't  
7 really recall the details?  
8 A. I'm certain that I would not have acted in  
9 isolation to make that decision.  
10 Q. You may or may not know the answer to this  
11 question, but my question is: Why did you and/or DNREC  
12 decide to, I guess, post the position competitively as  
13 opposed to doing, I guess, a career ladder promotion or  
14 something like that?  
15 A. I don't recall the answer to that, so I  
16 wouldn't want to speculate. There are options available  
17 to managers to provide for the most expedited mechanisms  
18 for hire, and so I think it was my responsibility, my  
19 duty to fill the positions as I saw fit in consultation,  
20 with approval of the Program Manager II and the division  
21 director.  
22 Q. It's fair to say that that decision to do a  
23 competitive hire was fitting for the time?  
24 A. I don't think it was in conflict with any

3 (Pages 6 to 9)

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1 process or policy of the State.

2 Q. Ms. Breslin, she ultimately received a position  
3 as an ES III through the competitive interview process,  
4 correct?

5 A. That's my understanding. That's my  
6 recollection.

7 Q. Did others interview for the position?

8 A. I would hope so. I don't recall.

9 Q. You don't know how many or anything like that.

10 A. I don't.

11 Q. Do you know why you chose Ann for this  
12 position?

13 A. I can't recall specifically, but I think that  
14 she would have had the qualities necessary to fulfill the  
15 requirements of the position based upon my knowledge of  
16 her academic, as well as work, history. Specifically in  
17 the Site Investigation & Restoration Branch.

18 Q. Did you submit a request for an advanced hire?

19 A. I did.

20 Q. Why did you do that?

21 A. I did it because, again, in consultation with  
22 my immediate supervisor and if he so chose to seek  
23 consultation with a division director, he would do so, we  
24 collectively decided that that was an appropriate action

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1 to take. And I also believe that Ann may have requested  
2 such, as well, which is, in my view, perfectly  
3 acceptable.

4 Q. Two questions. Who was your immediate  
5 supervisor at the time?

6 A. I don't know how to pronounce or spell it, his  
7 first name or his middle name. We just called him  
8 N.V. Raman.

9 Q. How do you spell Raman?

10 A. R-a-m-a-n.

11 Q. Why did you feel that it was an appropriate  
12 action, this advanced hire?

13 A. I have viewed most of the hires that I had as  
14 qualified people, and I also had as a regular -- as part  
15 of this promotional package had received in advance the  
16 salaries and service dates of other persons in similar  
17 ES III positions within Air and Waste Management and I --  
18 in looking it over now, it seemed to be a reasonable  
19 approach to take.

20 Q. The advanced hire request.

21 A. Yes.

22 Q. As I understand it, without an advanced hire  
23 request, someone coming in to an ES III position would  
24 receive 80 percent of the midpoint. Is that correct?

Page 12

1 A. I believe that was correct at the time. I  
2 can't speak to what it is now.

3 Q. If a person is receiving 80 percent of the  
4 midpoint, does that mean they're not credited for any  
5 prior work experience or education?

6 A. You know, that type of assessment is best done  
7 by the Personnel Department of DNREC. I may be  
8 incorrect, but I believe that the decision to request the  
9 advanced hire is management and the decision to accept  
10 that recommendation is the Personnel Department  
11 management. The management at Superfund felt that it was  
12 acceptable and appropriate to request an advanced hire,  
13 so that's what we did.

14 Beyond that, it had been my knowledge and  
15 understanding and history, practice that that decision  
16 for accepting the recommendation was really DNREC  
17 personnel management.

18 Q. Do you know who in DNREC personnel management  
19 is responsible for accepting advanced hire?

20 A. I would suggest that Marilyn Morris was or is  
21 the ultimate authority at DNREC, recognizing that there  
22 probably are appeal processes within the State's system  
23 beyond that.

24 Q. You said Marilyn Morris; is that correct?

Page 13

1 A. Marilyn Morris or Marilyn Ramsey. I think she  
2 was remarried.

3 Q. How about Sharon Tazelaar, did she play a role?

4 A. I believe Sharon did play a role. She reported  
5 to Marilyn.

6 Q. Based on my review of the advanced hire  
7 request, it seems as though managers support their  
8 request by providing details about the employee's  
9 previous experience in terms of their Bachelor's,  
10 Master's degree, I guess their technical field of  
11 expertise.

12 My question is: What is your understanding  
13 of how DNREC personnel becomes familiar with that  
14 technical expertise in order to make a decision?

15 A. Well, I think that your statement is correct  
16 that they look at the number of years of experience and  
17 that will help -- my understanding of what they do is  
18 that the number of years of experience weighs heavily on  
19 their decision to accept or reject a recommendation for  
20 advanced higher. And that they want to place some type  
21 of weight on the quality of the work experience, how  
22 relevant it is to the duties of the position and the  
23 value to the department.

24 Again, I would suggest to you that we were

4 (Pages 10 to 13)

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1 **the producers and the transmitter of information. We**  
2 **were not the decision-makers.**  
3 Q. That's fair. I'm just trying to figure out  
4 how -- based on your understanding, if you have one, how  
5 personnel would determine the weight and quality of the  
6 experience if they don't work in that field.  
7 **A. All I can suggest to you is that we at the**  
8 **time, if we could pull back to 1996, there would have**  
9 **been rules and guidance as to how we go about this**  
10 **process, and my job would be to follow those rules, and**  
11 **in the context of advocating for the advanced hire, I**  
12 **would want to do all that I could to present a compelling**  
13 **case for the advanced hire.**  
14 Q. Do you know whether anyone from personnel  
15 consults anyone from the actual department regarding the  
16 advanced hire request?  
17 **A. You know, I seem to recollect that there might**  
18 **have been third parties that they would seek out subject**  
19 **matter experts. Certainly I think that's done for review**  
20 **of applications to see if people are qualified. That may**  
21 **have been the case also for reviewing advanced hire**  
22 **requests. I don't know.**  
23 Q. Do you know where these third-party subject  
24 matter experts come from? Are they part of DNREC?

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1 **A. My understanding is yes. At the time.**  
2 Q. And the time that we're talking about is during  
3 your employment?  
4 **A. Yes. With DNREC.**  
5 Q. Yes. Take a look at the advanced hire request.  
6 It's dated November 13th, 1996.  
7 **A. Yes.**  
8 Q. It's from you as program manager to  
9 Sharon Tazelaar. You can look at either one.  
10 MS. CSIZMADIA: Can we go off the record  
11 for a second?  
12 MS. BREWINGTON: Yes.  
13 (Discussion off the record.)  
14 BY MS. BREWINGTON:  
15 Q. Have you had an opportunity to review this?  
16 **A. I did review this.**  
17 MS. BREWINGTON: Off the record.  
18 (Discussion off the record.)  
19 BY MS. BREWINGTON:  
20 Q. We're going to have this marked, actually, but  
21 he's going to look on a different copy of it.  
22 (Kalbacher Deposition Exhibit No. 1 was  
23 marked for identification.)  
24 BY MR. BREWINGTON:

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1 Q. You indicated that you had an opportunity to  
2 review this, correct?  
3 **A. Yes.**  
4 Q. Tell me what this document is.  
5 **A. The title of it is "Request for Advance**  
6 **Promotion for Competitive Hire of Ann L. Breslin," and it**  
7 **indicates that "Ann has been selected via competitive**  
8 **interview process for an Environmental Scientist III,"**  
9 **and that I am requesting via the approval of three other**  
10 **persons that her hire salary be at 91.8 percent of**  
11 **midpoint. And it provides a justification based upon her**  
12 **academic background and work experience.**  
13 Q. The three other approvals, is that  
14 Nicholas Di Pasquale?  
15 **A. Uh-huh.**  
16 Q. And Leilani M. Wall?  
17 **A. Yes.**  
18 Q. And N.V. Raman?  
19 **A. Yes. If I may clarify, if they don't initial**  
20 **on this document, then it doesn't go anywhere.**  
21 Q. I don't see initials on this document.  
22 **A. Well, at some point there were initials on the**  
23 **document.**  
24 Q. It did go somewhere and they initialed it?

Page 17

1 **A. Initialing means agreement unless they say**  
2 **initial with concerns and send it back. It's not acting**  
3 **in isolation.**  
4 Q. Your request was a salary of 91.8 percent of  
5 the midpoint?  
6 **A. Yes.**  
7 Q. Is there a reason why you chose 91.8 percent?  
8 **A. I don't recall specifically, but I would**  
9 **suggest that it was based upon the salary comparison of**  
10 **other ES IIIs in the Division of Air and Waste Management**  
11 **which are identified on the second page.**  
12 Q. I'm looking at that now. Is it fair to say  
13 that the range of ES III positions in the Division of Air  
14 and Waste Management is -- and I don't know the answer to  
15 this yet because I'm looking. Is it from like \$33,000 to  
16 \$41,000, approximately?  
17 **A. I believe it is similar, but it goes up to at**  
18 **least \$43,374.**  
19 Q. I see that one. So the lowest is around  
20 \$33,000. I see a 38. I see a 40. So between 33 and 40  
21 thousand?  
22 **A. \$43,000.**  
23 Q. \$43,000?  
24 **A. Yes.**

5 (Pages 14 to 17)



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1 Q. Based on that, you chose to request  
2 91.8 percent of the midpoint?  
3 A. Well, again, I think if you look at the date  
4 1996 and the fact that I think we were indicating that  
5 she has approximately on the high end 5.159 years, if you  
6 were to use that as a first cut as comparison to a  
7 service date, then you would find that the vast majority  
8 of the Environmental Scientist IIIs would have a service  
9 tenure much longer than the candidate in this case.  
10 There were some exceptions. But I see, in fact, maybe  
11 two or three exceptions to that rule.  
12 Q. Is the 5.159 years of experience, is that  
13 considered on the high end? Is that what you said?  
14 A. I think it is just a reflection of her total  
15 work experience as a laboratory assistant at a college up  
16 through her years of experience with SIRB. What I'm not  
17 able to -- let me back it up a little bit, because if you  
18 look at the service date and then you look at Ann's  
19 service date, she would have basically three years.  
20 Q. How do you figure that out?  
21 A. The service date is service to DNREC. So her  
22 service date time would be 2.916 years with SIRB. That's  
23 all she ever worked for. So then you go to 3, you go '96  
24 to '93 and there might be one person or maybe one or two

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1 people -- maybe three. Again, maybe three that would fit  
2 that category that you might look at in the context of  
3 service date versus salary.  
4 Q. It's fair to assume that you felt that Ann  
5 deserved an advanced hire request; is that correct?  
6 A. Absolutely. I wouldn't have -- I believe the  
7 decision was mine to initiate, but the decision to agree  
8 with that was also N.V. Raman's, Leilani Wall, and  
9 Nicholas Di Pasquale. So I was an advocate for the  
10 advanced hire.  
11 Q. Can you tell me why you felt that she deserved  
12 an advanced hire request?  
13 A. I can't specifically recall exactly what I was  
14 thinking, but I happen to know that Ann did a good job  
15 for the Superfund program as reflected in her performance  
16 reviews, that she agreed with those performance reviews,  
17 and based upon her history of work and her past work  
18 experience, I judged that that was an appropriate thing  
19 to do.  
20 Q. What work experience did you use to justify  
21 your request on advanced promotion?  
22 A. Again, I can't specifically recall other than  
23 what is here.  
24 Q. You can actually refer to the document. I

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1 don't have a problem with that.  
2 A. I think the document speaks for itself. I  
3 reflected upon her years of experience with Superfund and  
4 her other related experience, I reflected that she had  
5 handled an intensive workload that was at the full  
6 Environmental Scientist III level, that she demonstrated  
7 excellent project management and organizational skills,  
8 and that she had past work experience that should be  
9 considered, and that she had excellent effective oral and  
10 writing skills.  
11 Q. You mentioned in the advanced hire request that  
12 wetlands scientist experience that she had with the  
13 Chesapeake Bay Foundation was directly applicable to the  
14 work performed at SIRB.  
15 A. Yes.  
16 Q. My question is: If you can recall, how was  
17 this work experience directly related to the work  
18 performed at SIRB?  
19 A. The Site Investigation Restoration Branch  
20 investigates land and so if there is a wetland, then that  
21 would be something that we would investigate.  
22 Q. That makes sense. That's something that maybe  
23 I wouldn't necessarily -- I mean, I didn't know. That's  
24 great.

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1 How about the laboratory assistance, is  
2 that directly applicable?  
3 A. I think I reflected that in the document that  
4 it was directly applicable because we do take laboratory  
5 samples and so knowledge of laboratory process and  
6 outcomes would be relevant to the position.  
7 Q. How about her Master's degree in  
8 geoenvironmental studies and Bachelor of Arts degree in  
9 biology and environmental science, is that directly  
10 related to her work at SIRB?  
11 A. Well, there are certain requirements for  
12 fulfilling the position to begin with, so the answer to  
13 that is yes.  
14 Q. Are you aware that a Master's degree is not a  
15 requirement of an ES III?  
16 A. I'm aware that that's the case.  
17 Q. So is it fair to say that the fact that she had  
18 a Master's degree added to your thought that she should  
19 deserve --  
20 A. I put it in the advanced hire request because I  
21 thought it had relevance.  
22 Q. You also indicate on the second page:  
23 "Accordingly, her professional and technical skill should  
24 be considered fully adequate and relevant, far beyond the

6 (Pages 18 to 21)

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1 entry level, to the requirements of the ES III for which  
2 she has been recommended."  
3 In your opinion, was her skill far beyond  
4 entry level?  
5 **A. I put it in writing. I stand by everything I**  
6 **put in writing.**  
7 Q. Take a look at -- I don't know what page it is,  
8 but it's the memo. It's actually attached.  
9 **A. Yes.**  
10 Q. This is a memo from you to Sharon Tazelaar and  
11 it's regarding Ann Breslin's advanced hire request  
12 supplemental information. It's dated December 10th,  
13 1996.  
14 Did Sharon request additional information  
15 from you?  
16 **A. I don't recall specifically the process that**  
17 **was involved; however, at a minimum, we must have**  
18 **received a response back to our initial request for**  
19 **advanced hire that it would not be accepted, and, as a**  
20 **matter of experience, when such things occurred, we would**  
21 **try to supplement -- we would try to query as to what**  
22 **were the -- what information was lacking, what could we**  
23 **try to provide in addition to what we had previously**  
24 **provided to support the recommendation.**

Page 23

1 Q. I know you can't specifically recall, but would  
2 it have been a common practice for you to receive  
3 something from Sharon in writing, or is that something  
4 verbally she would discuss with you?  
5 **A. Well, I can't recall. Obviously the best way**  
6 **is always to put it in writing. I don't see it in the**  
7 **record, so I have to presume that it was some form of**  
8 **oral conversation, discussion.**  
9 Q. Take a look at the next page for me. It's the  
10 State of Delaware Employee Performance Planning and  
11 Appraisal. The evaluation period of January 1, 1995,  
12 through December 31, 1995. It's for Ann Breslin, and her  
13 classification is an Environmental Scientist II. Is that  
14 your signature where it says "Rater"?  
15 **A. Yes.**  
16 Q. Whose signature is it where it says "Reviewer"?  
17 **A. N.V. Raman.**  
18 Q. And the final score is 5.64; is that correct?  
19 **A. Yes.**  
20 Q. Tell me, I guess, what exactly a 5.64  
21 calculates into.  
22 **A. A 5.64 is a score that exceeds the performance**  
23 **meets expectations, employee performance is fully**  
24 **competent and reliable. That is the 5.0 standard. So it**

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1 **is higher than that standard but lower than performance**  
2 **consistently exceeds expectations, employee's**  
3 **acknowledged for exceptional effort which is a 7.0.**  
4 Q. Would it be fair to say that during that year  
5 she exceeded expectations?  
6 **A. It would be fair to say that during that year**  
7 **her performance exceeded the meet expectations standard.**  
8 Q. You can put that document aside.  
9 This request for an advanced hire of  
10 91.8 percent of midpoint was denied; is that correct?  
11 **A. That's my understanding and my recollection.**  
12 MS. BREWINGTON: I'd like to have that  
13 marked as Kalbacher 2.  
14 (Kalbacher Deposition Exhibit No. 2 was  
15 marked for identification.)  
16 BY MS. BREWINGTON:  
17 Q. Have you had an opportunity to review that  
18 document? Tell me what I placed before you.  
19 **A. This is a letter that was drafted and signed by**  
20 **myself to Ann Breslin which is a formal offer of the**  
21 **position of Environmental Scientist III effective**  
22 **November 16, 1996, for a salary of \$29,496. This**  
23 **references the fact that there is a pending request for**  
24 **advanced salary.**

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1 Q. At this point it had been denied; is that  
2 correct? The next sentence says, "The salary advance  
3 request was pursued during November through January 8,  
4 1997. However, it was denied by DNREC."  
5 **A. I read that, correct, yes.**  
6 Q. So the \$29,496 salary that she received, that  
7 did not include an advanced hire request.  
8 **A. It did not have an advanced hire request.**  
9 Q. Does that mean that this salary, the \$29,496  
10 represents 80 percent of the midpoint?  
11 **A. I would presume that's the case. I don't have**  
12 **the table to know that for a fact.**  
13 Q. I know that you were requesting, is it,  
14 91.8 percent?  
15 **A. Yes.**  
16 Q. Do you know why she didn't receive anything in  
17 terms of any credit for any experience?  
18 **A. I can't recall.**  
19 Q. Did that make sense to you?  
20 **A. Certainly, if I had requested 91.8 percent,**  
21 **that anything less than that would have been something.**  
22 Q. How was it communicated to you that this  
23 request was denied?  
24 **A. Again, I don't recollect, but I don't see**

7 (Pages 22 to 25)

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1 any -- I don't have any information provided in writing  
2 to me, so I have to presume that it was conveyed orally.  
3 Q. But you don't have any recollection of a  
4 conversation with anyone from personnel?  
5 A. There had to have been a conversation. Somehow  
6 the information was conveyed to me.  
7 Q. I'm asking you as you stand here today, do you  
8 have any recollection?  
9 A. I believe that there was a recollection because  
10 knowing Ann, she would have wanted to know specifically  
11 what was going on and encouraging me to make contact, and  
12 I'm sure I did.  
13 Q. But as you stand here today, you do not have  
14 any recollection of the conversation?  
15 A. I don't.  
16 Q. You do not have an understanding of why the  
17 request was denied?  
18 A. I don't have a specific recollection. I'm sure  
19 at the time I did. And I can only suggest to you that  
20 the additional information that was provided to the  
21 Personnel Department was done to bolster her  
22 qualifications and to bolster her work experience, number  
23 of years of relevant work experience. I suspect that  
24 personnel may have viewed the work experience in a

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1 different way than I did, the relevancy of it.  
2 Q. Meaning that they may not have felt it was  
3 relevant?  
4 A. They may have viewed the work experience  
5 differently than I did. I can't really --  
6 Q. Because you really don't know what they were  
7 thinking?  
8 A. I wasn't in their head.  
9 Q. You didn't receive any documentation that you  
10 can recall?  
11 A. I don't recall. It may be there, but I don't  
12 recall.  
13 Q. Do you recall any conversations with Ann about  
14 the advanced hire request?  
15 A. I recall that I certainly talked to her about  
16 pursuing the advanced hire. I know that I would have  
17 talked to her about the initial rejection of the advanced  
18 hire request. I would have coordinated with her on the  
19 seeking of additional information from the Chesapeake Bay  
20 Foundation. Only Ann could provide that information.  
21 That would be sent from me. So I had to have talked to  
22 her about that.  
23 Q. Do you know whether you discouraged Ann from  
24 pursuing the fact that she received a denial?

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1 A. You know, it's not my decision to discourage or  
2 encourage people. It's my decision to advocate and  
3 pursue in writing. So that decision is Ann's.  
4 Q. Did you have any discussions with her as to  
5 whether she should grieve this denial?  
6 A. If we did have a discussion, it was in the  
7 context of what the personnel rules allow for, but it  
8 would be inappropriate for me to offer advice in that  
9 regard. That's a personal decision by the employee. I  
10 was serving in management and trying to advocate for the  
11 employee, and I don't think it would be appropriate to  
12 have offered advice in a grievance, potential grievance,  
13 case.  
14 MS. BREWINGTON: I don't have anything  
15 further.  
16 BY MS. CSIZMADIA:  
17 Q. Just a couple questions. Going to Kalbacher 2,  
18 which was the letter to Ann, the acceptance letter.  
19 A. Yes.  
20 Q. Actually, that's the wrong one. Let me ask you  
21 a question first.  
22 Did you lie to Ann in any way to get her to  
23 take this Environmental Scientist III job?  
24 A. Lie to her?

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1 Q. Yes.  
2 A. No. I had no reason to lie to her.  
3 Q. Did you mislead her in any way to get her to  
4 accept the job?  
5 A. No. I think it's a good thing she got hired.  
6 Q. Looking at Kalbacher 1, the last sentence under  
7 the heading "Salary Request," could you read that for us?  
8 A. "Her salary is funded from the Federal  
9 Pre-Remedial Support Agency Cooperative Agreements."  
10 Q. What does that mean that she's supposed to work  
11 on?  
12 A. That means that her responsibilities should be  
13 working on federal Superfund preremedial sites.  
14 Q. Is that one of the sections in the SIRB branch?  
15 A. Yes. That was the section that I managed along  
16 with other programs.  
17 Q. What other programs were there in the SIRB  
18 branch?  
19 A. Well, there was the state Superfund, the  
20 federal Superfund remedial, the voluntary cleanup  
21 program.  
22 Q. Are the duties of the scientists in those  
23 different areas exactly the same as the ones in -- as  
24 each other?

8 (Pages 26 to 29)

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1 **A. No. They're different.**  
2 Q. Who wrote this document that I was just asking  
3 you about, Kalbacher 1?  
4 **A. I did.**  
5 Q. Did you have any assistance from anyone?  
6 **A. I would presume that I received assistance from**  
7 **the Personnel Department or the personnel liaison to**  
8 **gather information on the salary comparison, and it would**  
9 **seem to me that I would have received information from**  
10 **Ann with regard to her years of experience with SIRB, her**  
11 **other years of relevant experience, her academic**  
12 **background, so that I could correctly convey her work**  
13 **experience.**  
14 Q. You indicated earlier that you must have asked  
15 her to get more information concerning the Chesapeake Bay  
16 Foundation?  
17 **A. I had to have.**  
18 Q. Drawing your attention to the EPPA. I meant to  
19 ask you this question earlier and I never did. I do not  
20 understand the dates on this. I'm not sure how relevant  
21 it is, but can you explain to me how it is that the  
22 performance plan was signed in October of '95 but the  
23 performance appraisal dates are January of '95?  
24 **A. Right. I suspect that that is an error on both**

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1 **our parts. It probably is '96 since the time period is**  
2 **January '95 to December '95. We would have concluded the**  
3 **performance review probably in January after the year had**  
4 **concluded.**  
5 Q. Continuing in that EPPA document --  
6 **A. You know sometimes when you have the beginning**  
7 **of the year, you go '95, '96, you just forget to do it.**  
8 **I think that's what it is. I did that a lot.**  
9 Q. It's a January thing.  
10 **A. Yes.**  
11 Q. Can you read me the comments under  
12 "Assessment"?  
13 **A. Under "Assessment," under "Employee Comments"?**  
14 Q. Yes.  
15 **A. "I will improve in this area as in all others**  
16 **with time."**  
17 Q. And the comments under "Job Dimension" -- or  
18 "Investigative/Research," I'm sorry.  
19 **A. "Rater Comments: Ann has done a good job**  
20 **writing PA/SI reports. The PA's require that**  
21 **considerable research be conducted."**  
22 Q. That is your comment?  
23 **A. Yes.**  
24 Q. Going down to interpersonal interactions, can

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1 you read me the comment there?  
2 **A. "Rater Comments," which are mine, "Ann works**  
3 **effectively with Branch staff to coordinate workload**  
4 **activities. Ann is a good listener."**  
5 Q. And Ann's comment?  
6 **A. "Karl has helped to bolster my confidence by**  
7 **giving constant positive and corrective feed back."**  
8 Q. Next page, comments under "Planning"?  
9 **A. Planning, this is Ann's comments. "With only a**  
10 **few investigations completed, I am pleased with my**  
11 **progress."**  
12 Q. Comments under "Workload Completion"?  
13 **A. My comments: "Ann is very aware of meeting**  
14 **project deadlines. She routinely meets these deadlines."**  
15 Q. Flipping all the way down to "Development of  
16 Others," same comment.  
17 **A. My comment: "Ann did a super job working with**  
18 **new staff on PA/SI Projects."**  
19 Q. "Agency/Unit/Program Representation," can you  
20 read that?  
21 **A. My comment: "Ann communicates effectively with**  
22 **the public on sites assigned. Ann is very courteous when**  
23 **dealing with the public."**  
24 Q. "Verbal Communications"?

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1 **A. My comment: "Ann conveys her views orally in a**  
2 **concise and meaningful manner. Ann did a good job**  
3 **meeting with the public regarding the Pusey and Jones**  
4 **Shipyard."**  
5 Q. This is a good review?  
6 **A. Yes.**  
7 Q. Looking at the range of salaries, which is the  
8 second page of that same exhibit, do you recall if there  
9 was a maintenance review that had an impact on the  
10 salaries of the environmental scientists?  
11 **A. I believe that there was a maintenance review**  
12 **at some point. I just don't recall when.**  
13 Q. Do you remember if it raised salaries or  
14 lowered salaries?  
15 **A. I believe at that time it lowered salaries.**  
16 Q. So some of the higher salaries here on this  
17 list that you're reading, the \$43,000s, the 40,s, are  
18 they from relatively earlier service dates, longer --  
19 **A. Those employees were Environmental Scientist**  
20 **IIIs prior to the reassessment of the environmental**  
21 **scientist series.**  
22 Q. Did you treat Ann any differently because she  
23 was a female than any of your other employees?  
24 **A. No.**

9 (Pages 30 to 33)

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1 Q. Do you have reason to believe that anyone else  
2 did?  
3 A. No.  
4 MS. CSIZMADIA: I have no further  
5 questions.  
6 MS. BREWINGTON: I don't have anything.  
7 (Deposition concluded at 1:50 p.m.)  
8 - - - - -  
9  
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REPLACE THIS PAGE  
WITH THE ERRATA SHEET  
AFTER IT HAS BEEN  
COMPLETED AND SIGNED  
BY THE DEPONENT

Page 35

1 TESTIMONY  
2  
3 DEPONENT: KARL F. KALBACHER PAGE  
4  
5 BY MS. BREWINGTON..... 2  
6 BY MS. CSIZMADIA..... 28  
7  
8 EXHIBITS  
9  
10 KALBACHER DEPOSITION EXHIBIT NO. MARKED  
11  
12 1 - A memorandum dated November 13,  
13 1996, with attachments..... 15  
14  
15 2 - A letter dated January 9, 1997,  
16 to Ann L. Breslin from Karl F. Kalbacher..... 24  
17  
18 ERRATA SHEET/DEPONENT'S SIGNATURE PAGE 36  
19  
20 CERTIFICATE OF REPORTER PAGE 37  
21  
22  
23  
24

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CERTIFICATE OF REPORTER  
STATE OF DELAWARE)  
)  
NEW CASTLE COUNTY)

I, Kimberly A. Hurley, Registered Professional Reporter and Notary Public, do hereby certify that there came before me on the 28th day of June, 2006, the deponent herein, KARL F. KALBACHER, who was duly sworn by me and thereafter examined by counsel for the respective parties; that the questions asked of said deponent and the answers given were taken down by me in Stenotype notes and thereafter transcribed by use of computer-aided transcription and computer printer under my direction.

I further certify that the foregoing is a true and correct transcript of the testimony given at said examination of said witness.

I further certify that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

Kimberly A. Hurley  
Certification No. 126-RPR  
(Expires January 31, 2008)

DATED:

10 (Pages 34 to 37)





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Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ANN L. BRESLIN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	05-290
STATE OF DELAWARE, DEPARTMENT,	)	
OF NATURAL RESOURCES AND	)	
ENVIRONMENTAL CONTROL,	)	
	)	
Defendant.	)	

Deposition of CHRISTINA WIRTZ taken pursuant to notice at the offices of Margolis Edelstein, 1509 Gilpin Avenue, Wilmington, Delaware, beginning at 10:00 a.m. on Tuesday, June 27, 2006, before Anne L. Adams, Registered Professional Reporter and Notary Public.

APPEARANCES:

LORI A. BREWINGTON, ESQ.  
MARGOLIS EDELSTEIN  
1509 Gilpin Avenue  
Wilmington, Delaware 19806  
for the Plaintiff,  
VALERIE S. CSIZMADIA, ESQ.  
DEPARTMENT OF JUSTICE  
102 W. Water Street, Third Floor  
Dover, Delaware 19904  
for the Defendant.

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Breslin

v.

State of Delaware, Department of Natural Resources &amp; Environmental Control

Christina Wirtz

C.A. # 05-290

June 27, 2006

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1 CHRISTINA WIRTZ,  
2 the witness herein, having first been  
3 duly sworn on oath, was examined and  
4 testified as follows:  
5 EXAMINATION  
6 BY MS. BREWINGTON:  
7 Q. Good morning, Miss Wirtz. My name is Lori  
8 Brewington. I have the privilege of taking your  
9 deposition today. Have you ever testified in a  
10 deposition?  
11 **A. Not a deposition per se. I have given testimony**  
12 **as a professional geologist before in the State of New**  
13 **Jersey.**  
14 Q. I'm going to ask you a series of questions. I  
15 will make every effort to ask them one at a time. If at  
16 any time you don't understand the question or would like  
17 me to rephrase the question, let me know and I will do  
18 that. If at any time you need to take a break, just let  
19 me know.  
20 **A. All right.**  
21 Q. When asking these questions, I want to make sure  
22 that you understand it. So, like I said, I will  
23 certainly rephrase or re-ask. But if you do answer the  
24 question, we will go ahead and assume that you understood

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1 the actual question.  
2 **A. Okay.**  
3 Q. We have a court reporter here. She will be  
4 taking down your responses to questions. Please make  
5 every effort to answer yes or no as opposed to the uh-huh  
6 or uh-uh's because for some reason they don't show too  
7 clear on the record. You won't know whether that's a yes  
8 or no or a maybe.  
9 At times your attorney may object to some of  
10 the questions I ask. That's entirely proper. The only  
11 thing I ask you to do, you go ahead and answer the  
12 question unless she specifically advises you not to  
13 answer the question.  
14 **A. Okay.**  
15 Q. Please, state your name for the record.  
16 **A. Christina Wirtz.**  
17 Q. And what I would like to do is actually talk  
18 about your work experience first at DNREC and then  
19 anything previous to that. Because I understand you are  
20 still working at DNREC; is that correct?  
21 **A. Absolutely.**  
22 Q. How long have you been employed at DNREC?  
23 **A. Approximately six years.**  
24 Q. And I would like you to walk me through your

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1 employment at DNREC. You can either start from now  
2 previously or from the beginning to now.  
3 **A. Okay. I started in November, 2000, as a manager**  
4 **of the Site Investigation and Restoration Branch for the**  
5 **Division of Air and Waste Management. This position is**  
6 **called a program manager II position. And I held that**  
7 **position for approximately four years, maybe a little**  
8 **more, and then made a change. I think it was in October**  
9 **of 2003. And I assumed a new position as a community**  
10 **outreach ombudsman for the Division of Air and Waste**  
11 **Management. For both positions, I reported to the head**  
12 **of the division, the director of Air and Waste**  
13 **Management.**  
14 Q. And was that at one time John Blevins?  
15 **A. Yes, it was.**  
16 Q. And is he no longer with --  
17 **A. No. He's with the EPA now.**  
18 Q. And why did you change positions from a program  
19 manager to an ombudsman?  
20 **A. At that time, I had a few personal situations**  
21 **that were occurring. Actually, it was like the perfect**  
22 **storm. My son was doing poorly in school. He had**  
23 **flunked a few subjects. My aunt was dying. And I had to**  
24 **take care of her at home and then later in a retirement**

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1 home. And I had some health issues.  
2 And at the same time, the division was  
3 reorganizing and this other position became available. I  
4 took a leave of absence for approximately three or four  
5 months to take care of my aunt. And then once she passed  
6 away, I returned to work. And shortly thereafter, I  
7 switched positions. It was a great opportunity for me to  
8 use some different skills. Not only am I professional  
9 geologist certified in the States of New Jersey,  
10 Pennsylvania, Delaware, Tennessee, I also have an art  
11 degree that I have never been able to use. Yes. So it's  
12 a nice change of pace for me at a very good time.  
13 Q. Okay. Now, I'll represent to you that Ann  
14 Breslin was employed as an environmental scientist  
15 between 1994 and February of 2003. Would it be fair to  
16 say your job title, at that time, was program manager II?  
17 **A. Correct.**  
18 Q. I'm not sure if you answered the question because  
19 I think we went off the record. Would you have been a  
20 program manager II during the time of Ann Breslin's  
21 employment?  
22 **A. Some of Ann Breslin's employment. I think Ann**  
23 **had been at the state for a number of years before I**  
24 **assumed my responsibilities as a program manager.**

2 (Pages 2 to 5)

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1 Q. I see. Okay. Did you have employees that  
2 reported directly to you as a program manager II?  
3 **A. Absolutely. I had approximately 30 employees**  
4 **that reported directly to me.**  
5 Q. You had approximately 30. Would one of them have  
6 been Paul Will?  
7 **A. Yes.**  
8 Q. How about Alex Rittberg?  
9 **A. Yes.**  
10 Q. So they both reported to you?  
11 **A. Yes.**  
12 Q. And they were program manager ones?  
13 **A. Correct.**  
14 Q. What did you do prior to working at DNREC?  
15 **A. For approximately 12 years I worked as an**  
16 **environmental geologist with a, well, it was several**  
17 **consulting firms in the area, in the tri-state area.**  
18 **Previous to that, I was a petroleum geologist, an**  
19 **exploration geologist in Texas for an oil company, In**  
20 **Search Exploration.**  
21 Q. Did you attend college?  
22 **A. I did.**  
23 Q. And from where?  
24 **A. Rice University.**

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1 Q. You received a Bachelor's Degree?  
2 **A. Yes.**  
3 Q. In what field?  
4 **A. Let's see. It was geology. It was a double**  
5 **major. Geology and fine art.**  
6 Q. Do you have any other education?  
7 **A. Yes. Masters course work at Southern Methodist**  
8 **University. I also attended Drexel University to take a**  
9 **hydro class, hydrology. Also the University of**  
10 **Pennsylvania, once I came here, to kind of help me shift**  
11 **to environmental geology from the petroleum geology**  
12 **field.**  
13 Q. As program manager, what were some of your jobs  
14 responsibilities?  
15 **A. Supervise approximately 30 employees. Also**  
16 **oversee the laboratory that we have on site at the Lukens**  
17 **Building, which is our field office. Oversee equipment**  
18 **that's used in the field, geologists, environmental**  
19 **scientists, engineers that do field work, do project**  
20 **management for this particular branch.**  
21 **This branch is responsible for all the super**  
22 **fund sites in the State of Delaware. There are three**  
23 **programs that are managed with this branch, Voluntary**  
24 **Clean-Up Program, Brown Fields Program, and the Hazardous**

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1 **Substance Clean-Up Act sites, which we refer to HSCA**  
2 **sites.**  
3 Q. And as a program manager II, did you have much  
4 interactions with Ann Breslin?  
5 **A. Yes. I had interaction every day with Ann.**  
6 Q. And as ES III, what were some of Ann's job  
7 duties?  
8 **A. At the program, there are so many sites that need**  
9 **to be addressed that each project manager would have to**  
10 **carry a full load, including what we consider to be very**  
11 **difficult sites, also some of the backlog sites that**  
12 **hardly anybody could ever get to. Extremely heavy loads**  
13 **consisting of field work, report writing, statistical**  
14 **analysis, computer work. And Ann particularly carried a**  
15 **very high load. She was one of our star managers.**  
16 **She was able to do a number of EPA removals**  
17 **for us. These are very complex fast paced hazardous**  
18 **situations. And Ann had the experience and the high**  
19 **level of responsibility. She could handle those sites**  
20 **with ease.**  
21 Q. When you talk about Ann's experience and her high  
22 level of expertise, are you comparing her to other  
23 environmental scientist III's?  
24 **A. I'm comparing her to the people that worked at**

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1 **the branch. We had engineers who did almost identical**  
2 **work to the environmental scientists. So it was a**  
3 **combination of environmental scientists and engineers.**  
4 Q. Would it be fair to say that Ann was at the top  
5 of --  
6 **A. Absolutely. In fact, Ann, we used Ann to train**  
7 **some of our new people. The majority of our new people**  
8 **would be mentored by Ann. She was great at field work.**  
9 **It's very detailed work. You have to follow EPA and**  
10 **state protocols. It has to be done just right. And we**  
11 **could trust that Ann would do this for us. And she**  
12 **trained some great people who are still at the state**  
13 **today.**  
14 Q. Now, are you familiar with a Keith Robertson?  
15 **A. Yes. Keith also worked for me.**  
16 Q. Would you agree that Keith Robertson's duties and  
17 Ann Breslin's duties were similar?  
18 **A. Almost identical. I would agree.**  
19 Q. My next question was going to be: How would you  
20 characterize Ann's work performance?  
21 **A. Excellent, reliable, dependable. Her deadlines,**  
22 **she met all her deadlines. Report writing skills,**  
23 **excellent. She was great at public speaking. We had a**  
24 **number of sites that were high profile sites. We were in**

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1 **the City of Wilmington. Helen Chambers Park comes to**  
 2 **mind. She could be relied on to do an excellent job at**  
 3 **all times.**  
 4 Q. Do you know whether Ann Breslin was the only  
 5 female ES III in SIRB?  
 6 **A. No, she was not the only that I recall.**  
 7 Q. And who else also worked in SIRB that was a  
 8 female?  
 9 **A. We have Kristen Thornton, Rebecca Hawkins,**  
 10 **Karissa Hendershot. Now, at the time that Ann was there,**  
 11 **I believe they were ES II's. They have since been**  
 12 **promoted to ES III's.**  
 13 Q. Let me ask you the question again. While Ann was  
 14 employed with DNREC, was she the only ES III in SIRB?  
 15 **A. Yes.**  
 16 MS. CSIZMADIA: Could you read that back,  
 17 please?  
 18 (Thereupon, the reporter read back the  
 19 pending question.)  
 20 MS. CSIZMADIA: You didn't say female. You  
 21 said only --  
 22 THE WITNESS: Oh, female. Yes. Thank you.  
 23 BY MS. BREWINGTON:  
 24 Q. Was she the only female ES III in SIRB at the

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1 time while she was employed?  
 2 **A. Yes.**  
 3 MS. BREWINGTON: Okay. Thank you for the  
 4 clarification.  
 5 MS. CSIZMADIA: You are welcome.  
 6 (Wirtz Deposition Exhibit No. 1, April 2,  
 7 2004, Request for Additional Information, was marked for  
 8 identification.)  
 9 BY MS. BREWINGTON:  
 10 Q. Take a look at that document that I just placed  
 11 in front of you. We are going to have that marked as  
 12 Wirtz 1. What I just put in front of you is a document  
 13 that was produced by DNREC to the EEOC during Ann  
 14 Breslin's investigation of gender discrimination.  
 15 Were you aware that both Ann Breslin and  
 16 Keith Robertson both began their employment making the  
 17 exact same amount of money? That's \$22,998?  
 18 **A. I was not aware of those amounts.**  
 19 Q. Would it be fair to say that since Keith  
 20 Robertson started out at the very same salary as Ann that  
 21 he was not credited with any prior work experience when  
 22 he began his employment?  
 23 **A. Can you rephrase?**  
 24 Q. Yes. If you look at the starting salaries of

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1 both Ann Breslin and Keith Robertson, you can see that  
 2 they are the same. My question is: Would it be fair to  
 3 say that since they are the same exact salary that Keith  
 4 was not credited with any previous work experience?  
 5 **A. I think you can say that.**  
 6 Q. If you take a look at the specific job duties  
 7 from the performance plan for Ann Breslin on Page 1  
 8 through 2 and also take a look at Keith Robertson's  
 9 specific duties from the performance plan Page 4 through  
 10 5, would it be fair to say that they had similar job  
 11 duties?  
 12 **A. They should have been almost identical. But let**  
 13 **me review this. Only the site names should be different.**  
 14 **But the type of work should have been exactly the same.**  
 15 **If you can save me the exercise, did you go through this**  
 16 **line by line and compare them?**  
 17 Q. I did. And there are some differences I did  
 18 note. And I wanted to ask you --  
 19 **A. The differences appear at the end to me. But I**  
 20 **do believe Ann did very similar work to what I'm seeing**  
 21 **here.**  
 22 Q. On Keith's?  
 23 **A. On Keith's.**  
 24 Q. Would it be fair to say that Ann's may not be a

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1 complete listing?  
 2 **A. I think that would be fair to say. I'm not**  
 3 **seeing any of the consultant qualification work that she**  
 4 **did. She supervised the program for us. I'm not seeing**  
 5 **the utilized advanced and innovative scientific methods**  
 6 **in the application of technical disciplines. They both**  
 7 **did that.**  
 8 Q. That's something that you see on Keith's that's  
 9 not on Ann's?  
 10 **A. Correct.**  
 11 Q. But it's your statement today that that's one of  
 12 her specific job duties as well?  
 13 **A. Absolutely.**  
 14 Q. Okay.  
 15 **A. I would say the last four bullets really.**  
 16 Q. Keith's?  
 17 **A. On Keith's you could apply to Ann's as well.**  
 18 Q. Okay.  
 19 **A. Ann also did -- there is like the unshaded**  
 20 **bullets at the top. She assisted in establishing ground**  
 21 **water management zones as required. That's part of**  
 22 **project management. She did work on the EQUIS**  
 23 **Implementation Team as well.**  
 24 **So really, you know, that last super bullet**

4 (Pages 10 to 13)

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1 with all those little ones, I think you could put those  
2 directly under Ann's qualifications as well.  
3 Q. Do you have any idea why they wouldn't be  
4 included in her specific job duties?  
5 A. No, I don't know why they weren't included.  
6 There is one thing that I don't believe that Ann did.  
7 And that was the participation in the ITRC and ASTSWMO  
8 work groups. But I'm not absolutely sure. I think Ann  
9 may have done ASTSWMO. That I'm not sure of. The others  
10 I am positive of.  
11 Q. Great. You can put that document aside. And  
12 I'll ask you to take a look at the document I just put  
13 before you that we are going to have marked as Wirtz 2.  
14 It's to Paul Will from Ann Breslin. It's CC'g, is it  
15 Lawrence Jones and Robert Asreen?  
16 A. Asreen, A-S-R-E-E-N.  
17 (Wirtz Deposition Exhibit No. 2, E-Mail to  
18 Paul Will from Ann Breslin Dated October 23, 2001, was  
19 marked for identification.)  
20 BY MS. BREWINGTON:  
21 Q. And the subject is site summaries and the date is  
22 October 23rd, 2001.  
23 A. Uh-huh.  
24 Q. I first just want you to review the document that

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1 I put before you.  
2 A. Okay.  
3 Q. We understand from Mr. Robertson's deposition  
4 yesterday that there are three basic groups of sites.  
5 And I think you mentioned them earlier; is that correct?  
6 A. Yes.  
7 Q. Did Miss Breslin, during her career, work across  
8 all three site types?  
9 A. Yes.  
10 Q. Now. This is an E-mail from October of 2001. My  
11 question is: What projects was she responsible for based  
12 on your review of this document?  
13 A. Based on my review of this document, all of these  
14 projects.  
15 Q. Okay. And with these projects, she served as the  
16 project manager?  
17 A. Correct.  
18 Q. What is the difference between a remedial site  
19 and a pre-remedial site?  
20 A. A pre-remedial site is a site investigation that  
21 is done for the EPA under an EPA grant, our pre-remedial  
22 grant. And there is a prescribed work plan that consists  
23 of doing soil borings and ground water wells for the  
24 purpose of collecting soil samples and water samples to

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1 kind of get an overall characterization of a site.  
2 Remedial work is entirely different. It is  
3 very intense. You have to have a full understanding of  
4 the hydrological conditions, the geologic conditions of  
5 the site and a work plan is designed by the project  
6 manager in conjunction sometimes with consultants to  
7 fully characterize a site.  
8 So it's different. There is the initial  
9 characterization that occurs for an EPA pre-remedial  
10 site. And then there is the full characterization or  
11 site investigation that is done when you are in a  
12 remedial process. That goes through a whole bunch of  
13 different steps before you reach a completion and closure  
14 for that particular site.  
15 Ann was adept at taking a site through the  
16 entire process with ease. There is no issue, no problem.  
17 And as you can see from the list here in the E-mail,  
18 there are a number of big sites, high level  
19 responsibility. They went across all of our programs,  
20 Voluntary Clean-Up, Brownfields, HSCA as well as NPL  
21 sites.  
22 Some of these are national priority lists,  
23 priorities lists sites or NPL sites that the state  
24 performs oversight with the EPA on. These are the

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1 highest priority sites that we have to deal with in the  
2 nation. And we have several, unfortunately, in the State  
3 of Delaware.  
4 And Ann has, according to what I'm looking  
5 at, there are a number. The NVF site. I think the  
6 electric hose and rubber became an EPA removal site,  
7 although not an NPL site. 12th Street Drum, removal, EPA  
8 removal. Yeah, she has quite a few.  
9 Q. And these are remedial sites?  
10 A. Remedial sites, yes.  
11 Q. At some point during Ann's career, did she work  
12 with -- did the two students from the University of  
13 Delaware work under her as interns?  
14 A. Yes, as interns.  
15 Q. And did they receive credit for school?  
16 A. Yes, they did. In addition, as I mentioned  
17 previously, to mentoring a number of the new  
18 environmental scientists and engineers who came to the  
19 program, she also mentored the interns and was  
20 responsible for their job duties every day.  
21 Q. Now, was that something that most of the senior  
22 scientists did?  
23 A. No, actually not. Some of them were better than  
24 others. Ann happened to be particularly good at

5 (Pages 14 to 17)

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1 mentoring. A few other environmental scientists -- I  
2 think Larry Jones would do some mentoring. Karissa, in  
3 the interim, Hendershot, has done some mentoring. But  
4 some people just were better at it. And Ann was one of  
5 those people.  
6 Q. Put that document aside.  
7 A. I recognize this.  
8 (Wirtz Deposition Exhibit No. 3, Memorandum  
9 to HR from Paul Will Dated May 7, 2001, was marked for  
10 identification.)  
11 BY MS. BREWINGTON:  
12 Q. Take a look at this document for me. I'm going  
13 to ask you a few questions about it.  
14 A. Yes.  
15 Q. Okay. What is this document?  
16 A. This is a memo to our HRO from me regarding Ann's  
17 advanced hire request. This is a draft that I edited  
18 quite extensively. This is Ann's first draft, I believe,  
19 with my edits throughout.  
20 Q. Is that your handwriting?  
21 A. It is my handwriting, yes.  
22 Q. And did you support Ann's request for an advanced  
23 hire?  
24 A. I was not at the branch at the time her request

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1 for an advanced hire went through. That was prepared by  
2 Carl Kalbacher who was a program manager I at the time  
3 under a different program manager II, N.D. Romen.  
4 However, when I first came to the branch,  
5 there were a number of what appeared to be inequities.  
6 And this was one of the inequities. Ann made me aware of  
7 the situation. She presented the documentation regarding  
8 the advanced hire request that she had submitted and  
9 also, with Keith Robertson's permission, the advanced  
10 hire request that he had submitted both in 1996. That of  
11 course, predated my time considerably.  
12 However, in the review of the documents, I  
13 was concerned that the state may have been in a  
14 vulnerable position regarding sex-based or biased wages  
15 because there seemed to be a discrepancy between how  
16 Ann's advanced hire was treated and how Keith's was  
17 treated.  
18 Q. Now, are we talking about gender discrimination?  
19 A. Yes.  
20 Q. And if you look over to the right, it's the first  
21 bullet on the --  
22 A. At the top?  
23 Q. Is that "main thrust should be sexual  
24 discrimination?"

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1 A. Absolutely.  
2 Q. Did you believe that the main thrust of this  
3 request should be sexual discrimination?  
4 A. Absolutely. Not only was I concerned for Ann,  
5 but I was also concerned for myself because with my  
6 responsibilities as a manager came the responsibility of  
7 ensuring that everything was done in accordance with  
8 Delaware and federal law. I signed off on pre-remedial,  
9 core grants, Brownfields grants three times every year  
10 stating that we did everything in accordance with Equal  
11 Opportunity Employee Equal Opportunity objectives.  
12 And the state feels very strongly about  
13 this. The state has just recently -- the governor has  
14 signed an executive order, 81, that there shall be no  
15 discrimination across the board. So this was very  
16 important to me to have our HRO office review because I  
17 could not see why one advanced hire was granted and the  
18 other was rejected.  
19 Q. Based on your review of both advanced hire  
20 requests?  
21 A. Correct, correct, exactly.  
22 Q. Were you concerned that perhaps the state's  
23 implementation of its own policy concerning advanced hire  
24 requests was, in fact, discriminating against Ann Breslin

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1 as a woman?  
2 A. I had those concerns.  
3 Q. How about the bullet underneath that, "His  
4 Master's counted; yours did not," question mark, "or just  
5 lab experience." Do you remember what you may have meant  
6 by that?  
7 A. Yes. Both received Master's Degrees in very  
8 similar fields. And I was concerned that Keith had  
9 received credit for his Master's Degree while Ann had  
10 not. I was not sure what the difference had been based  
11 on, why one had received the advanced hire, the other had  
12 not. So these were notes to review with Ann to ask her  
13 these questions.  
14 Q. Do you know who in human resources made the  
15 determination in 1996 that Ann would not receive an  
16 advanced hire request but Keith would?  
17 A. I believe Sharon Tanzler? I may have to look it  
18 up.  
19 Q. Tazelaar perhaps?  
20 A. Yes. Thank you.  
21 MS. CSIZMADIA: T-A-Z-E-L-A-A-R.  
22 Q. Is she still with DNREC?  
23 A. I don't think so.  
24 Q. Are you aware of any illness that she may have?

6 (Pages 18 to 21)